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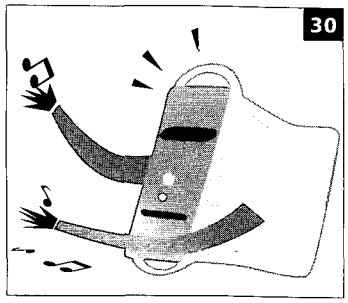

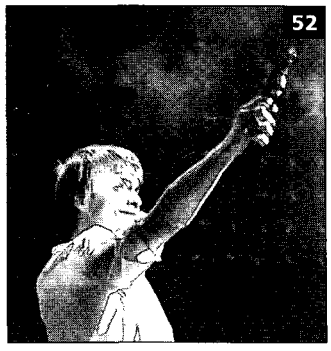

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Without Merit

Why merit pay won't reform public education.

By Nick Gillespie

Forget about what students did on their summer vacations. Their teachers were up to something far more interesting, and something that signals as surely as the final class bell of the day the inevitable end of the public school monopoly.

At its annual convention in July, the National Education Association—the country's largest teachers union, with about 2.5 million members—flirted promiscuously with the idea of endorsing "merit pay," the whacked-out notion that wages should be in any way linked to job performance (an idea which, for reasons the union has yet to grasp fully, is the rule in every profession except for teaching). Over the past few years merit pay has emerged as one of the leading proposals to reform public schools.

The NEA, famous for refusing even to consider what it routinely disparages as "arbitrary, top-down merit pay systems," actually passed a resolution that the national organization will give "technical assistance" to the growing number of local chapters that have such inhumane systems foisted on them by school boards or state legislatures. Additionally, the union was open-minded enough to include this comment on its Web page devoted to the "Best New Idea Heard" at the convention. "Pay for performance," wrote one attendee, lamenting, "I guess we're just not ready for it yet."

In a similar vein, Sandra Feldman, the president of the American Federation of Teachers, the nation's second-largest teachers union, has granted that "great teaching" should be "rewarded financially" and that such rewards can in fact "be handed out in a fair and rational way."

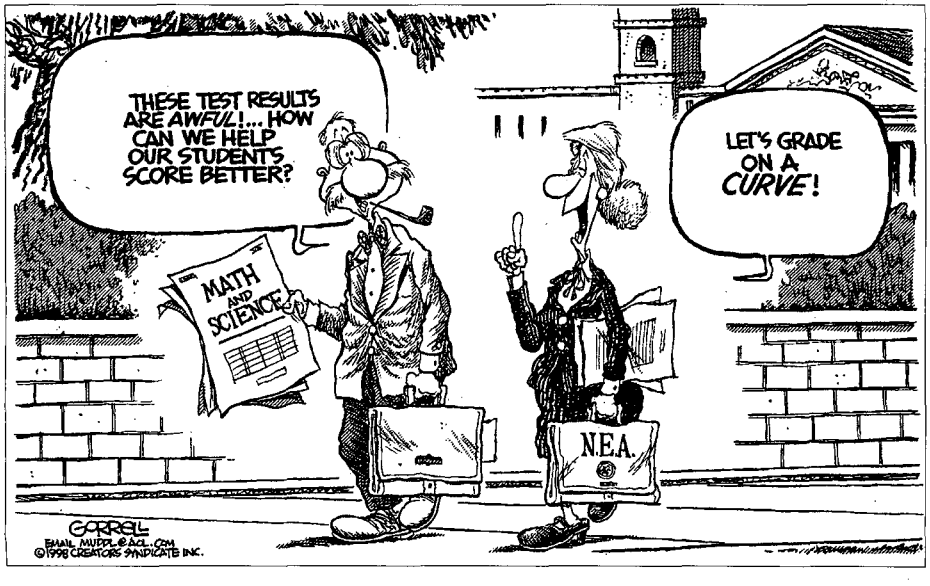
To be sure, such crumbs don't make for much of a mid-morning snack for kindergartners, much less a hot lunch for high schoolers. And it's true that the NEA rank-and-file roundly voted to condemn what union head Bob Chase castigated as "merit pay based upon subjective criteria," a term the NEA defines expansively enough to include both evaluations by school administrators and student performance on standardized tests. But the simple fact that teachers unions are even opening the topic to discussion underscores that the education establishment is being destabilized. The only reason they are taking up the issue is because they're trying to preserve whatever credibility they have left with taxpayers.

In most contexts, of course, minor concessions to common sense are hardly noteworthy. When it comes to education, such acknowledgments, however laughably grudging, are the equivalent of Mikhail Gorbachev's *perestroika* in the old Soviet Union: They're a clear, if low-key, indicator that the system is gloriously close to utter collapse.

The teachers unions' passive-aggressive stance toward "performance-based pay initiatives shouldn't cause too much worry for those concerned about education reform," writes Andrew Rotterham, the director of the 21st Century Schools Project at the Democratic Leadership Council's Progressive Policy Institute. "The public's appetite for reform, coupled with growing attention to these issues from policymakers, means change is coming."

Rotterham is right, of course, that change is coming. In fact, it's already here, as evidenced by the rise and acceptance of charter schools (over 1,700 have opened nationwide over the past decade) and the proliferation of private and public voucher initiatives (even those that fail at the ballot box strike a blow against the empire). To again compare the education establishment with the Soviet Union, an easy and all-too-apt comparison, given each system's bureaucratic inefficiency and unresponsiveness: It is simply a matter of when, and not if, the fall will take place. The process can be sped up or slowed down, but not stopped.

However, reform advocates are wrong to assume that merit pay is a particularly useful way to effect educational change. Given the way the issue is likely to play out, it will simply shift attention from the bedrock concern—securing a quality education for kids—and redirect it toward what is properly an internal management issue. As important, it is precisely the sort of "reform" that teachers can easily coopt and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turn to their own financial advantage while staving off far more fundamental challenges to the status quo.

Debates over merit pay, and salary concerns more generally, draw education consumers and taxpayers so close to the inner workings of public schools that such issues risk obscuring more important, big-picture reforms, especially implementing choice in the broadest terms possible. As with the ability of teachers to insulate pay from performance for so many years, it is testament to the generally bizarre and obfuscating discourse surrounding education that we are so routinely treated to detailed discussions of the ins and outs of public-school teacher compensation.

Debates over merit pay obscure more important big-picture reforms, especially implementing choice.

Do we particularly care about, much less know the gritty details, of how workers are paid and incentivized in other lines of work (even in the public sector)? When we walk into a Wal-Mart, say, or a doctor's office, we don't overly concern ourselves with whether employees draw a salary, work on commission, or get paid by the hour. For the most part, we let businesses sort out those issues themselves.

Instead, we rightly focus on our overall experience—atmosphere, service, and the like—and whether it is satisfactory or not. If it isn't, we go elsewhere—we exercise choice. There's no fundamental reason why the same logic shouldn't apply to schools. Indeed, it's telling that we know relatively little about how private schools compensate their teachers.

This is not to say that how teachers are paid is not meaningful. Certainly it is extremely important to teachers and administrators. If teachers are unhappy with their situation, they're likely to do a worse job; if administrators cannot reward excellence and punish mediocrity through differential pay (or by firing malefactors), they effectively have no control over their faculty. But such internal organizational concerns should not be particularly relevant to the consumer, except insofar as they are bundled into the overall consumption experience. Certainly it seems likely that if a salesman at a department store or a doctor spent most of our time carping to us about his wages—the equivalent to debates over amounts and methods of pay for public school teachers—we'd likely go elsewhere in the future.

Then there's the question of who will ultimately design, implement, and oversee merit pay systems. The AFT's Feldman supplies that answer—and the shape this "reform" will take—when she champions two systems that she believes deliver "true merit pay." Unsurprisingly, both spurn "subjective" criteria such as student performance and embrace "objective" certification from the National Board for Professional Teaching Standards, a U.S. Department of Education–funded nonprofit.

The board's tough-as-nails requirements insist, among other things, that "teachers know the subjects they teach" and that "teachers think systematically about their practice and learn from experience." In other words, the process focuses almost exclusively on what the teacher does, not on what students learn. In California, writes Feldman, "teachers who successfully complete the certification process get a $10,000 bonus" while North Carolina "pays the entire $2000 application fee for teachers who complete the National Board process and it gives [them] a 12 percent increase in the state's portion of salaries."

No one would dispute that such deals are pretty good for teachers. But like other programs that stop short of giving students the one thing that matters—the ability to go elsewhere if dissatisfied—merit pay will do little more than buy teachers time until the inexorable shift from the current system to one based on choice.

Nick Gillespie (gillespie@reason.com) is REASON*'s editor-in-chief.*

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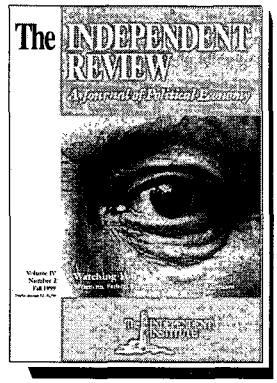

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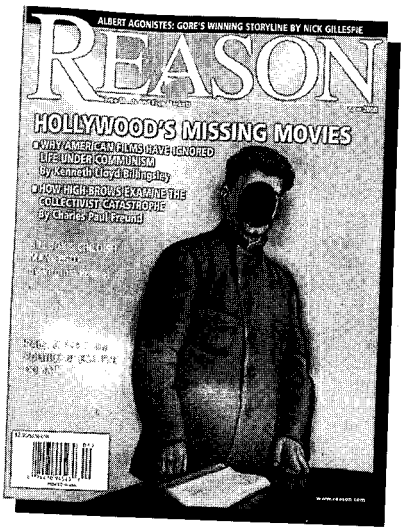
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WHY AMERICAN FILMS HAVE IGNORED LIFE UNDER COMMUNISM
By Kenneth Lloyd Billingsley
HOW HIGH-BROWS EXAMINE THE COLLECTIVIST CATASTROPHE
By Charles Paul Freund

Red Hollywood

Three cheers to Kenneth Lloyd Billingsley for exposing Hollywood's failure to come to grips with the subject of Soviet communism ("Hollywood's Missing Movies," June).

He did not mention, however, Darryl Zanuck's fine anti-communist films of the late '40s and early '50s for 20th Century Fox. *The Iron Curtain* (1948) was a suspenseful and dramatic film detailing the desperate attempts of Igor Gouzenko, a Soviet clerk in Ottawa, to make contact with the Canadian government and media about the extent of Soviet espionage in the West. Two other films, *Diplomatic Courier* (starring Tyrone Power, 1952) and *The Night People* (starring Gregory Peck, 1954), were directed principally against Soviet espionage in West Germany, with no holds barred. All of these are intense and powerful films, but unfortunately none of them is currently available on video.

No Hollywood film, as far as I know, describes any aspect of the Gulag—only a few fleeting moments with Anthony Quinn at the opening of *The Shoes of the Fisherman*. Solzhenitsyn's three-volume *The Gulag Archipelago* will provide endless material for tense and dramatic cinematic treatment. The film *One Day in the Life of Ivan Denisovitch* treats the miseries of camp life but doesn't touch the massive, life-destroying cruelty of the Gulag projects. The first chapter of volume one of the *Gulag*, on the construction of the Balmoral Canal, has enough heavy drama for any number of movies.

There is an abundance of material on the Soviet system now available, much of it cinematic dynamite. Think of just one incident in Shostakovich's autobiography, *Testimony*: Stalin plays cat and mouse with him by telephone, encouraging him one day and threatening him with execution the next, then sends him to New York to spread Soviet propaganda to American correspondents.

As Shostakovich speaks, he tries with subtle cues and gestures to make the reporters detect the truth concealed by the words he is made to utter, but none of them sees through the propaganda. They are too excited at finally seeing the great Soviet composer in person. What an opportunity that one scene would present to an able actor and an imaginative director! Yet today, years later, it remains only a small incident in a powerful book, thus far (and perhaps forever) untouched in any film.

John Hospers
Los Angeles, CA

I read "Hollywood's Missing Movies" with great interest. I would like to bring your attention to one small mistake: Hitler's invasion of Soviet Russia—called Operation Barbarossa—began June 22, 1941, and not in September 1939 as you stated. You have inadvertently confused the attack

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on Russia with Hitler's invasion of Poland (September 1, 1939).

Eric Mowrey
Bursins, Switzerland

Kenneth Lloyd Billingsley replies: John Hospers is one of many to unearth anti-communist films I neglected to mention, including *Escape from East Berlin*, a European effort. *Boat People*, about the exodus from Vietnam, is another. Perhaps yet another reader will help these films appear in the video market.

I thank Eric Mowrey for his comments and for pointing out the inadvertent transposition of dates for two of Hitler's invasions.

Local Guns

Kenneth Smith's article on the news media and guns ("Loaded Coverage," June) helpfully exposes the biases of the national elite press. I suspect, however, that similar analysis of the local media would paint a more attractive picture. The local media are likely to be more responsive to (and share) local community sentiments on guns (pro or con), to be more connected to police and prosecutors than to organized interest groups such as either the National Rifle Association or Handgun Control Inc., and to be more concerned with the facts of the story than with making a political point.

Smith himself points to the reporting of the *Rankin County News* on the school shooting in Pearl, Mississippi. Similar stories of less high-profile events probably abound at the local level. *The Houston Chronicle*, for example, reported on an event that would never have attracted the attention of the national media. In 1994 a deputy sheriff was shot during a traffic stop of what turned out to be a group of teenaged car thieves. His life was saved by a passing motorist who pulled his own gun and returned fire. The motorist the *Chronicle* hailed as a "good samaritan" noted that the car thieves learned the useful lesson "that other people have guns, too" and "that guns can fire two ways." He could have been a poster boy for the NRA: a Korean War veteran and retired gun-shop owner on his way to the shooting range when he came across the besieged officer.

Such reporting may not be heard in Washington, D.C., but it undoubtedly helps shape how average people think about these issues.

Keith E. Whittington
Assistant Professor of Politics
Princeton University
Princeton, NJ

Planning Pittsburgh

As a person who has lived and worked in Pittsburgh, I was most intrigued by Bill Steigerwald's article ("Death By Wrecking Ball," June). While in the main I agree with his conclusions, I'd like to present a different spin on Pittsburgh's redevelopment efforts. Such yuppie-style redevelopment is unfortunately inevitable.

I say unfortunately because I love the old-style city: shops, streets, independent businesses, the variety and diversity that can be found only in the core of a major city. I've lived in Pittsburgh, and I loved it for its people, its hills, its neighborhoods, and, most important, its being urban (not urbane, but urban). Unfortunately, I'm in the minority and I've had to witness the centers of many fine cities become "yuppified." I'm not saying that re-gentrification or redevelopment per se are bad; rather, the problem seems to be that the city fathers are jumping the gun on both the market and the economic realities. It's actually a civic version of keeping up with the Joneses...and an expensive version at that.

Pittsburgh has evolved dramatically over the years. While it lost thousands of blue-collar jobs in the steel industry, it has gained thousands of white-collar, high-tech, and office jobs in their place. To a certain degree, there must be an out-with-the-old, in-with-the-new mentality, but the city fathers are throwing out the baby with the bathwater. Many other rust belt cities are not destroying their blue-collar past; rather, they are turning their past into a tourist-oriented future, a future with the small(er) businessman in mind.

On the other hand, the same small businessmen could be facing very similar problems even if the redeveloper were a private business and no taxpayer funds were involved. Perhaps a good example of this would be Rockefeller Center in New York City. We now see a modern, urban multi-use commercial complex; however, hundreds of small(er) businesses were forced to relocate so that Rockefeller could build this monument to his ego.

Times change, and the laws of supply and demand should be allowed to guide the transition. Unfortunately, many of the taxpayer-funded, municipally ordained redevelopment agencies know nothing about the laws of supply and demand. There's no need to worry about economic realities when you've got your paws in the taxpayer's wallet!

Fred Bluestone
Lauderhill, FL

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Citings

Touching Data Bases

By Jeff A. Taylor

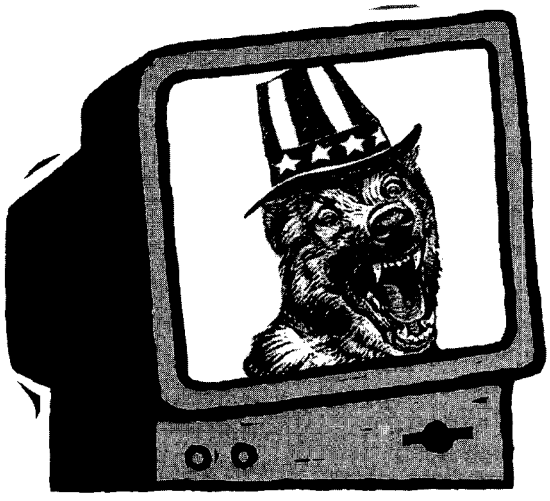
The Federal Trade Commission has gone to war to ensure Web site operators don't pass along consumer information to mass marketers. But when fellow feds start stockpiling citizen data, the FTC is MIA.

The Federal Bureau of Investigation is trying to have as many data collection points in place as possible before the zero-oversight Reno years come to an end. First up is the bureau's brazen, bit-sniffing Carnivore system, which the FBI installs directly on Internet service providers' servers to trap "suspect" communications. The system then sifts through the data looking for hackers, drug dealers, and terrorists.

Such a system is quite different from old-style analog phone taps, which require investigators to identify their targets. You couldn't ask a judge for permission to wiretap a city block. Carnivore, by contrast, munches indiscriminately through gigabytes of data. This is more or less total government surveillance of electronic communication, and how it squares with constitutional protections against unreasonable searches and seizures is hard to see.

Then again, a federal court just handed the FBI the right to maintain a national registry of firearm owners, even though Congress specifically outlawed any such thing. A provision of the Brady Handgun Violence Prevention Act mandates "instant background checks" of gun buyers. Gun dealers send personal data about prospective buyers to a Justice Department data bank. Supplying the data—the customer's name, sex, race, date of birth, and state of residence—is supposed to prevent guns from being sold to convicted felons and such. Since November 1998, about 280,000 purchases out of 14 million have been rejected.

Little known is the fact that the Justice Department has allowed the FBI to keep *all* gun purchase records for six months after the sale. The National Rifle Association filed suit over that practice, citing language in the Brady law requiring that all information on approved gun sales be destroyed. But the NRA lost that argument in U.S. district court last year and again in July, when the U.S. Court of Appeals for the D.C. Circuit also agreed with the Justice Department.



The department says it has to keep the records around to weed out corrupt gun dealers. Oh.

Perhaps we should turn Carnivore loose on those dealers' Internet accounts, and those of their possible straw-man buyers, and their friends and families too. Then we'll *really* find out what they're up to.

Balance Sheet

By Jeff A. Taylor

ASSETS

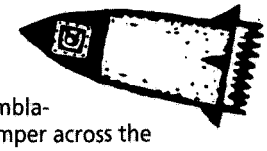
△ **▲ Dope Decision.** The Ontario Court of Appeals rules Canada's pot law is unconstitutional because it does not allow for medical uses. The court declared the current drug law "to be of no force and effect" and gave Parliament a year to come up with new legislation.

△ **▲ Rice Dream.** Monsanto makes its patented, vitamin A-enhanced rice available to poor countries for free. Thousands of kids go blind each year due to a lack of vitamin A. But bio-engineering critics compare Monsanto to drug pushers. Whatever.

△ **▲ Top Heavy.** Tax-code "fairness" is alive and well. *Statistics of Income Bulletin* reports that the top 1 percent of taxpayers paid 33.2 percent of total individual income taxes for 1997, up from 32.3 percent the year before. The top 5 percent, or those above $108,048, paid nearly 52 percent of all income tax.

△ **▲ Open Road.** Lawmakers in North Carolina vow to challenge a federal mandate banning car passengers' possession of an open beer as a condition for road dollars. The Hobson's choice of changing a state law or losing $170 million in federal highway money violates the 10th Amendment, say Tarheel legislators.

△ **▲ Moon Shots.** The private sector aims high with trips to a Russian space station and the moon on the line. MirCorp tries to sell trips to the orbiting Mir stations while RadioShack signs up to sponsor a lunar landing. Plans are for a robotic rover emblazoned with the RadioShack logo to scamper across the moon in 2003.



△ **▲ Search Function.** Congress backs away from using the Methamphetamine Anti-Proliferation Act to authorize secret police searches of homes and businesses. Under the law, the state would have been allowed to seize or copy things, and not tell the owners about it until 90 days later—if then.

△

More Bras, Less Crime

By Katherine Mangu-Ward

Kursty Groves, a 26-year-old graduate of London's Royal College of Art and Design, is developing the Techno Bra, sure to be hailed by anarcho-capitalists everywhere as a giant step toward privatizing the police force.

The brassiere contains a global positioning system, a heart rate monitor, and the components of a cell phone. If the wearer is attacked, the bra sends a signal to a GPS satellite, which determines the location of the assault and dispatches a text message to the number of the wearer's choosing—possibly a private security firm or a bodyguard. The wearer has 30 seconds to disarm the bra in case of a false alarm.

If this catches on, the potential attacker will soon be as wary of the well-endowed

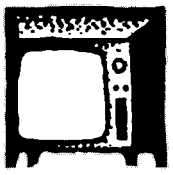
▼ **WHO What?** The World Health Organization confirms its uselessness by releasing a study placing the United States with the 37th-best health care in the world, behind San Marino, Andorra, Malta, Italy, Spain, Oman, and Canada, to name a few.

▼ **School Code.** Tax lawyers from the American Bar Association along with the IRS conspire to pollute high schools with 78,000 CD-ROMs on America's tax system. The goal? To explain the tax code to teenagers.

▼ **Teaching Politics.** The Associated Press reports the National Education Association spent millions of dollars to elect "pro-education candidates," produce political training guides, and gather teachers' voting records. For the 2000 election, about $5 million will be spent on "organizational partnerships with political parties, campaign committees and political organizations." A 1993 IRS audit of the NEA found no political spending.

▼ **Stealth Tax.** Recent congressional tweaking of the tax code starts to bite. About 5 million taxpayers had their itemized deductions limited on returns filed for 1998, an 8 percent increase from 1997. Some $25.9 billion in deductions were wiped out as a result.

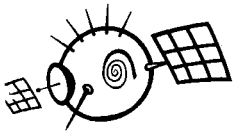
▼ **Too-Full Spectrum.** The Federal Communications Commission delays an auction of old television spectra, halting plans for a more efficient use of air space. The UHF channels 60–69 might be used for much-needed wireless data traffic.



▼ **Air Cav.** U.S. attack helicopters leased to Colombian police for counter-narcotics missions are used against anti-government guerrillas in drug-producing areas. The State Department–owned choppers are only supposed to be used "in support" of anti-drug efforts, a meaningless distinction in a shooting war.

LIABILITIES

woman as he is of the musclebound man with a gun rack in his pickup.



Insuring Protection

By Sara Rimensnyder

Racial profiling by police has sparked protest and debate nationwide. It has also inspired a business plan: A legal insurance company has decided that profiling's likely victims are a market waiting to be tapped.

Based in Ada, Oklahoma, Pre-Paid Legal Services offers clients telephone access to an attorney 24 hours a day, seven days a week. Subscribers, who pay $10 to $26 per month, also get a membership card to flash at police officers. The card is supposed to jolt the cops into accountability by reminding them that they're dealing with a citizen who has rights—and an attorney.

Meanwhile, several states are responding to questions about racial profiling with legislation. In July, for instance, the Massachusetts Senate overwhelmingly approved a bill requiring officers searching a car to record the driver's race and gender so the data can be analyzed

for patterns of bias. Cops would also have to take an anti-bias course and hand out complaint cards with a toll-free number to report discrimination.

Burn, Baby, Burn

By Katherine Mangu-Ward

As the May forest fire started by the U.S. Forest Service burned down more than 18,000 acres of forest and 400 homes in New Mexico, members of the U.S. House of Representatives passed the Conservation and Reinvestment Act. The bill, which President Clinton promises to sign if it passes the Senate, allows the government to spend up to $3 billion a year for the next 15 years to buy additional land for parks and conservation programs.

The bill not only assumes a level of competence that the New Mexico debacle undercuts, it ignores a $5 billion ▶

QUOTES

"I didn't know whether I was reading billions or millions. That turned out to be a problem. [I was thinking,] 'Is this thousands, millions, or billions?'"
—Circuit Judge Robert Kaye in a July 17 interview with the Associated Press, explaining his hesitancy upon seeing the record $145 billion verdict in *Engle v. R.J. Reynolds*, a class action lawsuit brought by Florida smokers

"Playing with the "In the U.S., it seems, a man's worth is now directly linked to his ability to oppress women."
—Alisa Valdes-Rodriguez, writing about pop music in the June 26 *Los Angeles Times*

SOURCE

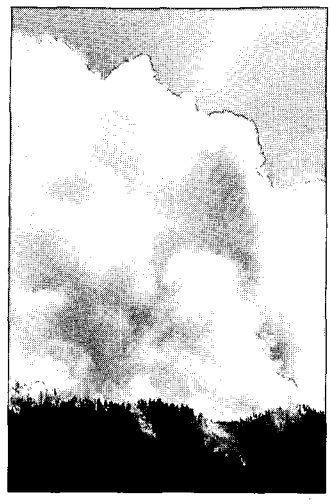
"Since the study of the marked—the extraordinary, the extravagant, the prominent, the influential—has been developed, **what happens when these tools are applied to the 'unmarked': the ordinary, the mundane?"**
—Call for papers for *The Journal of Mundane Behavior* (**www.mundanebehavior.org**), a new "on-line and inter- and cross-disciplinary journal"

BRICKBATS

♦ Mathias Bachmeier is serving life without parole for a 1996 murder. You might think that's what's keeping him from pursuing his prior career as a police officer. You'd be wrong. The state of California has ruled that Bachmeier can't return to work because of depression and post-trauma disorder resulting from his conviction. He's now receiving a $30,000 annual pension.

♦ A Chicano group has launched a protest over the student newspaper at California State University at Northridge. An editorial in the paper endorsed a measure requiring students who need remedial English or math classes to be failed if they don't pass those classes in their freshman year. The paper didn't make any remarks about racial or ethnic groups, but the activists say that its meaning is clear because 75 percent of Latino freshmen need remedial math and 70 percent need remedial English. "They're saying minority students are here and should not be here, and are taking the places of other students that should be here," says Gerald Resendez, chairman of the Chicano Studies department.

♦ Residents of the District of Columbia must pay federal taxes, but they lack voting representatives in Congress (among other elements of self-government). So its City Council just passed a resolution to replace the slogan currently on the city license plates—"Celebrate and Discover"—with a new one: "Taxation Without Representation."



maintenance backlog on lands the federal government already owns. Apparently, owning more than 60 percent of Nevada is not enough to, in the words of Al Gore, "ensure that our children and grandchildren will be able to experience the majesty of the untouched forest."

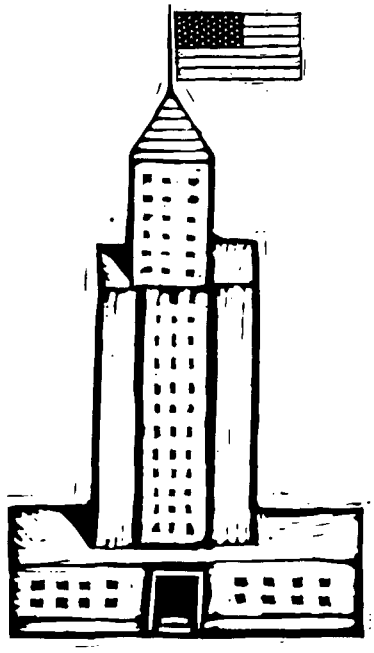
Bureaucratic Slumlords

By Mariel Garza

The federal government, it seems, is not simply a questionable park owner. It's also a terrible landlord. More than half of its 1,682 buildings are in dire need of repairs, some requiring more than $20 million of work to comply with safety standards. What's more, the problem isn't new. According to a General Accounting Office report released in April, the federal government's property management agency has failed to repair many building problems that were identified almost a decade ago and have undoubtedly gotten worse—and more expensive to fix—over time.

Why? There are more repairs than the agency has money to fund, despite spending an average of $580 million on improvements each year. At the end of 1999, there was still about $4 billion of work left to be done. Plus, the property management agency's computer files on repair status are a mess.

The feds have a new strategy, though, borrowed from the private sector: They'll give repair priority to those buildings that would yield the highest rent, thus giving the fund more money to fix additional buildings.



Guns Down Under

By Jacob Sullum

Last spring, Australian officials complained that a TV spot produced by the National Rifle Association was misleading the public about the impact of their country's strict gun control policies. The ad, which can be viewed on the NRA's Web site (www.

☛ "If the United States were composed of cities run on a Walt Disney World basis, there would no doubt be terribly puritanical communities with respect to sexually explicit literature, cruelty to animals, seatbelt usage—all the standard 'moral' problems. But there would also be incentives for other communities to cater to individuals' 'immorality.'"

—David Levy, "Learning Economics from Walt Disney World"

☛ "I don't think that Dick Nixon or Gerald Ford have the right, the intelligence, the know-how or the talent to control anything but their own bowel movements—and even that is somewhat in doubt."

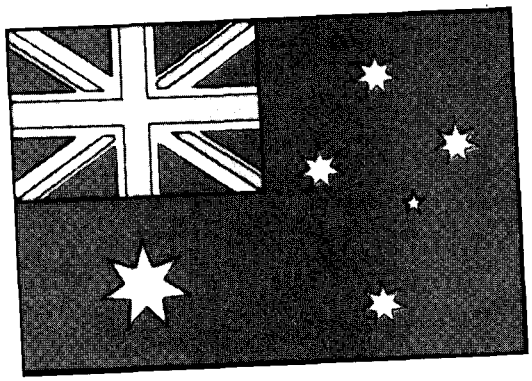
"We have more corporate officers who are women, and the three highest-paid individuals in my organization, which comprises some 500 employees, are women, rather than men....When I first discovered what women could do—that you give a woman an opportunity, all things being equal, and she's going to work twice as hard, three times as hard as the average guy—it was a great day for me."

—"Fighting Censorship for Profit: An Interview with Bob Guccione"

nra.org), says that murders with guns, assaults with guns, armed robberies, and home invasions all increased after the Australian government confiscated about 660,000 privately owned firearms in 1996. "According to the Australian government—and official statistics—the NRA has its facts wrong," *The Christian Science Monitor* reported.

Well, yes and no. The murder claim is somewhat misleading. According to the Australian Institute of Criminology, a government-funded think tank, the number of gun homicide victims dropped from 104 in 1996 to 79 in 1997. But since 35 of the 1996 victims died in a single episode (the Port Arthur massacre, which was the catalyst for the government's gun seizure), the number of gun homicide *incidents* actually rose. According to the Australian Bureau of Statistics, the total number of homicides (with and without guns) also rose, from 350 in 1996 to 360 in 1997, before dropping to 333 in 1998. That year there were 54 gun homicides, about half as many as in 1996.

The NRA's other claims are on firmer ground. ABS figures indicate that, between 1996 and 1998, assaults rose 16 percent, armed robberies jumped a startling 73 percent, and unlawful entries went up 8 percent.



Defenders of gun control cite the 1998 decline in homicide as evidence that Australia's policies are working, while opponents cite the two-year increases in other offenses as evidence that the government has encouraged criminals by disarming law-abiding citizens. It's hard to say who is right. Homicides in Australia have been fluctuating since the late 1980s, and the upward trends in assaults, robberies, and unlawful entries began before 1996. Still, it may be significant that the robbery trend accelerated dramatically after potential victims were forced to turn in their guns.

DATA

Pro-Choice Congressmen

By Katherine Mangu-Ward

School choice already exists for those who are able to pay for it, and many of those well-heeled parents have been elected to high office. In the House of Representatives, 37 percent of members with school-age kids are sending one or more children to private school (discounting 62 non-respondents). Fifty percent of senators with school-age kids do the same (discounting seven non-respondents). The comparable figure for regular American households with school-age kids is about 15 percent.

Which raises the question: Exactly when will they afford such an opportunity to their constituents?

Where Members of Congress Send Their Children to School

House of Representatives

Private School: 113 (71 Republicans; 42 Democrats; 0 Independents)
Public School: 193 (96 Republicans; 95 Democrats; 2 Independents)
No School-Age Children: 22 (13 Republicans; 9 Democrats; 0 Independents)
No Children: 45 (22 Republicans; 23 Democrats; 0 Independents)
No Response: 62 (21 Republicans; 41 Democrats; 0 Independents)
Total: 435

Senate

Private School: 41 (28 Republicans; 13 Democrats)
Public School: 42 (23 Republicans; 19 Democrats)
No School-Age Children: 1 (1 Democrat)
No Children: 9 (3 Republicans; 6 Democrats)
No Response: 7 (1 Republican; 6 Democrats)
Total: 100

SOURCE: "HOW MEMBERS OF CONGRESS PRACTICE SCHOOL CHOICE," THE HERITAGE FOUNDATION.

No Liberté Online

By Sara Rimensnyder

A recent court decision in France may presage a frustrating conflict between the borderless Internet and the French elite. On July 24, the American Web company Yahoo! testified in Paris against a Gallic court's ruling that it must block French users' access to a site where people buy and sell Nazi memorabilia. Jean-Jacques Gomez, the judge who decided the case, argues that Yahoo! disregarded French territorial boundaries by making the site accessible in France, where it is illegal to sell racist merchandise.

Gomez had ordered Yahoo! to return to court in July with evidence that they had taken steps to block French users. Instead, company co-founder Jerry Yang sent an expert witness to testify that such a barrier would be ▶

BRICKBATS

♦ Cruising to a Virginia Beach strip club to celebrate his 23rd birthday, Paris Williams and two of his friends decided to watch a sexually explicit movie on the TVs they had recently installed in their 1997 Hyundai. Unfortunately, a state trooper on the Hampton Roads Bridge-Tunnel spotted them and charged them with public display of obscene material. He also discovered—oops—some crack and marijuana in the car.

♦ Last year, a Connecticut law went into effect allowing police to seize the weapons of people they think might pose a danger to themselves or others. Police subsequently raided Thompson Bosee's home in Greenwich and took 11 firearms that he legally owned. Why did they think he might pose a danger? Because someone had allegedly seen him in his yard with a gun, and when they checked, they found he'd failed to appear in court eight years earlier on a drunken driving charge.

♦ The word *history* has been deemed sexist and will no longer be used at England's Stockport College. The school has also banned *ladies* and *gentlemen* because of their association with social class. *Mad, crazy,* and *manic* have been tossed because they stigmatize mental illness. *Man-made* is sexist, so it's out too. And the phrase *slaving over a hot stove* minimizes the horrors of slavery, so it can't be used either.

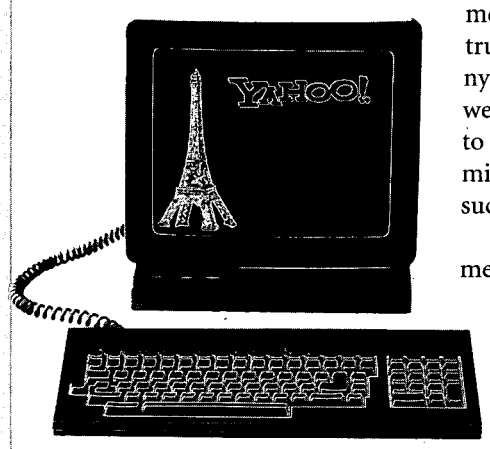
—Charles Oliver

technically impossible. In interviews, Yang has been blunt: "We are not going to change the content of our sites in the United States just because someone in France is asking us to," he told the French daily *Liberation.* Gomez will issue his decision in mid-August.

In related news, the French government is pushing the Liberty of Communication Act, which would require anyone publishing a Web site to register with the government. The bill's opponents have pointed out that anyone who wants to publish anonymously can evade the law simply by using a foreign Web host.

French leaders aren't oblivious to such logistical problems. At a G-8 meeting in May, Prime Minister Lionel Jospin called for "a collective response on a global scale" to Internet crime and terrorism.

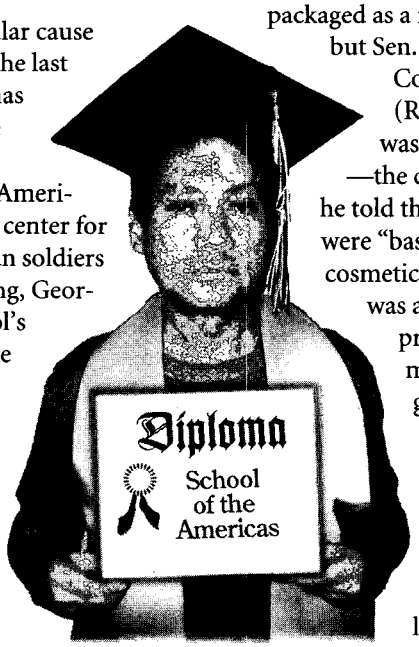
The Net, an intrinsically global medium, clearly has the French authorities in a tizzy. They've fought doggedly in recent years to defend their territory against cultural marauders (read: the United States, with its blockbuster movies and Anglo-Saxon words). But what to do about the confounded Internet? Convince the whole world to conform to Paris' views on free speech? That's gonna take a lot of *vin rouge.*



Back to School

By Jesse Walker

One popular cause during the last several years has been the drive to close the School of the Americas, a training center for Latin American soldiers in Fort Benning, Georgia. The school's alumni include former Panamanian dictator Manuel Noriega, former Haitian dictator Raoul Cedras, and Salvadoran death squad chief Roberto D'Aubuisson, along with many less-famous autocrats, assassins, and thugs. Critics have long charged the institute with teaching torture, terrorism, and politically motivated murder.



These charges were bolstered in 1996, when some of the school's manuals came to light. The Pentagon subsequently admitted that the texts discussed such techniques as "motivation by fear, payment of bounties for enemy dead, false imprisonment and the use of truth serum," while denying that the materials were still in use. (Prior to this, of course, the military had denied that such texts existed at all.)

In May, as the argument grew more audible, Congress stepped in and shut down the School of the Americas. In the same breath, it opened the Defense Institute for Hemispheric Security Cooperation, which will teach the same curriculum to the same people, in the same place. Amazingly, this was packaged as a reform, but Sen. Paul Coverdell (R-Ga.) wasn't fooled—the changes, he told the press, were "basically cosmetic." This was an impressive admission, given its source: Coverdell, who died of a stroke in July, had long opposed closing or seriously reforming the school.

Recoding Downtown

By Charles Paul Freund

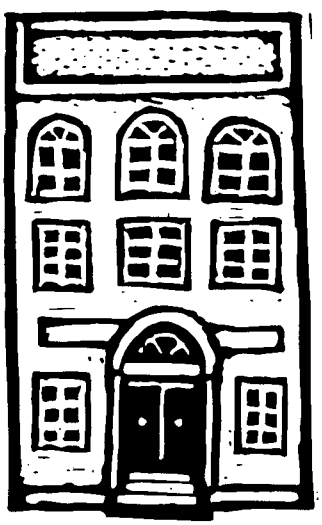
Here's a market paradox: In recent decades, the massive redevelopment of many older cities has led to the seeming antithesis of dynamic urban life. Innumerable downtown streets have been lined with new but sterile "box" buildings and are often devoid of any activity not generated by offices. There are many causes behind this effect, including bad development, zoning, and a tangle of safety code restrictions.

Safety codes have been deadly for older buildings. Many owners who have considered rehabilitating old properties have had to abandon their plans when faced with the enormous costs of bringing a structure "up to

code." The reason is the bureaucratization of safety. Like all regulation, such codes cover ever-expanding territory, from wiring to stairwells to hallway widths. In theory, the codes are not ironclad: Inspectors usually have leeway in passing on building elements—such as hallways—that may not impinge on safety. But safety bureaucrats are like other bureaucrats: Faced with a choice, they are likely to say no. Owners, faced with having to widen every hallway in a building (or not knowing what they'll be faced with), are that much more likely just to demolish their old properties.

But in 1998, New Jersey revamped its approach to such codes. The state drew up a set of highly detailed new guidelines that give more importance to some rules than to others, depending on the nature of the project. A proud state official recently told *The Washington Post*, "We've transformed a regulatory crap shoot into an informed business decision." According to the state, the new rules have saved building owners as much as 25 percent on rehab projects.

In April, Maryland adopted a similar reform. But in that notoriously anti-business state, the rationale wasn't a fair break for building owners; it was the state's war on "sprawl." Maryland wants to use these "smart codes" to pit its older cities against its booming suburbs.



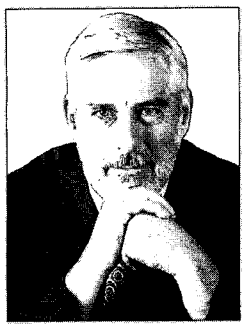
Even so, if "smart codes" manage to spread further, it won't be because of safety bureaucrats, who'd lose power under them. It'll be through pressure from property owners and others who stand to profit. Profiting most, however, will be the cities and those who use them.

SOUNDBITE

Privy Counsel

By Brian Doherty

Robert Ellis Smith, an attorney and journalist, has had privacy on his mind for a long time. Since 1974, he's edited the very useful newsletter *Privacy Journal* (www.townonline.com/privacyjournal) which reports all the twists and turns of the legal and technological changes that affect our ability to keep ourselves to ourselves. His most recent book is *Ben Franklin's Web Site: Privacy and Curiosity from Plymouth Rock to the Internet* (Privacy Journal), an engaging and exhaustive historical survey of American privacy law and American attitudes toward privacy. Associate Editor Brian Doherty interviewed Smith by phone in July.



Robert Ellis Smith

Q: Your book documents how laws that define privacy are constantly shifting. What's your definition of privacy?
A: The attempt by an individual to control the collection, dissemination, and use of their personal information. Privacy is also the quest for some safe haven, a physical space away from interruption and accountability and distraction.
Q: What are today's most pressing privacy concerns?
A: Overuse of Social Security numbers, credit report inaccuracy, vulnerability of medical records, and surveillance at work, whether video surveillance or monitoring of Internet browsing and telephone calls. Also, video surveillance in the community at large. We have no legal limits on electronic surveillance if it's video without sound, whether by private agents or a municipality. Electronic surveillance laws only cover audio.
Q: Which do folks fear more: governmental or private assaults on privacy?
A: People used to worry more about the government until the mid-'80s. Then they discovered that threats came equally from both. People feel a loss of autonomy when information they've left on a Web site is used to manipulate them, or information they've put on a credit application, like an unlisted phone number, becomes a vehicle for interrupting their day, for trying to market a product to them. They feel that's a manipulative violation of their sense of autonomy. They realize that private organizations like credit bureaus can deprive them of jobs, mortgages, automobiles, some real necessities of life. Credit reports used to have limited use, mainly for installment loans and revolving credit. Now they are used for employment and insurance as well.
Q: One of the biggest media worries about privacy today is information people leave behind them, either knowingly or unknowingly, while surfing the World Wide Web.
A: Those are *not* the greatest privacy threats, though they seem to be getting the most attention right now. These are threats that the marketplace could well cure. People go to the Web voluntarily, but they do need more sophistication about what happens to their information once they go. So far the Internet has been a fairly competitive environment. I would hope that sites that offer more privacy protection would use that as a marketing advantage. Technology can help as well, with services that will anonymize experiences on the Web. So through technological and market forces, Internet privacy issues can be mitigated a whole lot. I don't think that's true with credit reports. No consumer pressure is on credit bureaus—they operate for the benefit of retailers.

Paper Targets

In which our man in Washington shoots his rocks off, keeps his lunch down in the company of Janet Reno, and attends a Ralph Nader sermon

By Michael W. Lynch

Subj: Point & Click Technology
Date: 6/14/2000
From: mwlynch@reason.com

Wade's Eastside Guns is in Bellevue, Washington, a plush suburb of Microsoft. I was in the Pacific Northwest to attend a conference organized by Academics for the Second Amendment, a group dedicated to encouraging scholarship about gun rights. About 20 people participated, mostly professor types, but a few journalists and a retired cop too. We were at Wade's on a field trip. We didn't just talk about guns at the conference, you see. We got to shoot them.

If guns do cause crime and suicide, then Wade's should have been a dangerous place. A federal judge had just ordered Microsoft to split up, and the net worth of most folks around these parts had taken a substantial hit. Yet there was neither a run on handguns nor a single suicide at Wade's, at least for the three hours I and the other conferees spent firing off 17,000 rounds from five submachine guns, one modified machine gun, and a long-range sniper rifle.

Members of the Microsoft Gun Club —each attired in the club's black polo shirts imprinted with the slogan "Point and Click Technology"—helped run the range.

"Judge Jackson didn't understand the technological issues," was how ex-Microsoft programmer Jim Gordon put it as he loaded up the magazine of a fully automatic Heckler & Koch MP5. Gordon, who's now with a software startup, said he's been hurt by the Microsoft decision. Yet he handed over the submachine gun, turning it on neither himself nor me in anger, and I was soon putting holes in my target's paper belly and head.

One station offered the Swedish K, a submachine gun first manufactured in Sweden and later in Egypt. To its left sat a British Sten gun, a popular World War II firearm. There were two H&Ks, the submachine gun of choice for America's law enforcement community. "It's the ultimate status symbol for police," noted Joseph Olson, a gun-toting professor from Minnesota's Hamline School of Law. "Many of them lie awake at night thinking about having one."

Irv Benzion, a National Rifle Association board member, was kind enough to bring out his .30 caliber Browning 1919, a lie-on-your-belly-and-shoot-'em-up semi-automatic rifle, a version of a machine gun used in both World War II and Korea—and quite a kick to shoot.

But even this bundle of fun was upstaged by Professor Olson's Barrett Bolt Action 50 BMG, a gun so big the federal government is considering banning it. In the hands of a skilled marksman, this long-range precision rifle can take out a politician or other object of hatred as far away as 1,000 yards. In my hands, it could barely hit a piece of paper a few yards away.

Lying on my stomach, I struggled to lift the damn thing into a position to fire. It was like a cannon going off. Its deafening blast rattled my head; its substantial kick sent pain through my shoulder and put a temporary crick in my back.

The academics and journalists appeared to have fun. "That's not too shabby," said Carl Moody, an economics professor at the College of William & Mary, after unloading two magazines of bullets from an M-16.

Our joy didn't go unnoticed by staff. "These guys are getting their rocks off," said a range hand. It wasn't just rocks that were getting off.

"It kind of feels like an accomplishment," REASON Contributing Editor Cathy Young told me, after blasting away at a target with a version of the very gun Janet Reno claims was never pointed at young Elian Gonzalez. "I can see myself owning a handgun."

Yet it wasn't only a day of accomplishment for Young, whose weak hands forced her to rely on a range staffer to load a pistol. "I just feel so humiliated," the author of *Ceasefire!: Why Women and Men Must Join Forces to Achieve True Equality*, told me. "I needed a man to load my gun for me."

And one fellow didn't enjoy the afternoon at all. "It's not my idea of fun," he confided in the men's room, where signs warned us to keep our guns holstered. "I don't like loud noises and...." His voice trailed off as he got down to business.

Subj: DOJ Victory Tour
Date: 6/22/2000
From: mwlynch@reason.com

I stopped by the National Press Club last Thursday for a leg of the Janet Reno–Joel Klein victory tour. The American Antitrust Institute, a cheer-

HENRY PAYNE

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Lester Bowie
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Paul Bley Contrary 1324

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leading group for antitrust enforcement, was bestowing its first annual Level Playing Field Award upon Klein the Mighty Microsoft Slayer.

Reno praised Klein for his heroics in the Microsoft case. Klein praised Reno for her brilliant handling of the Elian raid. If there's one thing worse than a backslapping pol, it's two backslapping pols.

In a display of sympathy for the working press, AAI had skimped on lunch, providing only a meager tray of cold cuts and a basket of chips. If I'd ingested a full banquet spread, I'm sure my dessert would have come up around the third time I heard how Reno's Justice Department has honorably upheld the rule of law.

It's fitting, then, that the event also promulgated one of the great vomit-inducing myths this town lives by: that working for the government is somehow nobler than toiling in the private sector. This myth contends that people who exchange riches and the freedom of the private sector for the power, Lincoln town cars, and butt kissing of high-level government work are making a sacrifice.

"Life has been very good to me," Klein told the adoring audience. "I've always wanted the opportunity to give back. And there's no place in the United States better than the Department of Justice, especially under the leadership of this woman."

Reno shoveled the same fertilizer, praising Klein for his ability to "dream [up] and create enforcement opportunities" and his willingness to "leave private practice, come to government, assume these great challenges."

You only had to read it. I had to listen to it and write it down. Thank heavens for a light lunch, indeed.

Subj: No Access
Date: 7/17/2000
From: mwlynch@reason.com

"If you wrote bad things about Trent Lott, it would make me look bad," Rick Parsons of the Young America's Foundation explained to me on the phone. "I need to put a positive spin on things."

The Young America's Foundation was hosting its National Conservative Student Conference, exposing impressionable minds to the likes of Oliver North and Bay Buchanan. The program also included a Capitol Hill briefing with Senate Majority Leader Trent Lott and the always entertaining Rep. Bob Barr (R-Ga.). I had called for an invitation to the event.

REASON, with its reputation for truth-telling, made Parsons nervous, and he was uncomfortable with my going to the Capitol Hill briefing. He tried to shoo me away from it, telling me I'd be better off covering the non-politician speakers: "Ollie is popular with the students," he explained as he started working his way down the program. But when I reiterated my interest in the pols, he cut me out. "I hope you understand," he said, even indicating that he is sympathetic to the magazine's view of politicians. "I feel terrible about it."

The Reno-Klein event promulgated the vomit-inducing myth that working for the government is nobler than toiling in the private sector.

Subj: Ralph's World
Date: 7/18/2000
From: mwlynch@reason.com

Presidential candidate Ralph Nader was blowing more smoke than a Corvair tail pipe: George W. Bush, he said, is "a legitimate conglomerate corporation disguised as a person." "The Democrats," he opined, have "become very good at electing very bad Republicans."

Democrats and Republicans marinated in corporate money have all but shut down civil society in America, preached St. Ralph. That was the message he delivered today at the National Press Club, where he killed an hour outlining his plans for "Deep Democracy." No, it's not a porn flick shot in D.C. He pledged to re-educate, not renominate, Alan Greenspan, to throw misbehaving corporations into federal trusteeship, and to empower bureaucrats to make the world a better place.

I wasn't politically aware in Ralph's heyday, when he was cool enough to appear on *Saturday Night Live*, which itself was once cool (or so I've been told). To me, Nader's always been just another busybody liberal, a bright lights, big city version of the characters who hang out at town council meetings. Ralph's world is one where solutions to problems—dangerous cars, child poverty, adult acne, whatever—are readily available. "Solutions are on the shelf that can deal with so many of our problems," he explained. The only thing that stands between our current hell of low wages, environmental degradation, ailing health, sexual repression, and racial animosity are those corporate forces that refuse to let us citizens pull the solutions off the shelf and run them up to the cash register.

To Nader, it's simply a matter of unleashing the creative energy of bureaucrats in every agency from the Forest Service to the Department of Energy. "They know what the problems are, they know how to solve these problems, but they are walking around with invisible chains, unable to speak," explained Ralph. This liberate-the- clerks line got big applause. Be very afraid of the D.C. press corps.

Ralph seriously believes letting your neighbors take a majority-rules vote on all your major life decisions will get us to the Promised Land. The first step, he explained, is full public funding of elections. "Public schools are funded by public funds and so are public parks," he said. So why not elections?

It sounds like a plan, but I'm not sure Nader will much like the result. Extrapolating from his two examples, voters, after dodging discarded hypodermic needles and being harassed by bums, won't be able to read the ballot. Then again, what's wrong with that? ◆

Virginia Postrel

Politicizing Parenthood

An "inclusive" and "tolerant" society can't have a government that treats nonparents as second-class citizens.

I used to think it was nobody else's business whether my husband and I planned to have children. I used to think it was rude to make such personal inquiries.

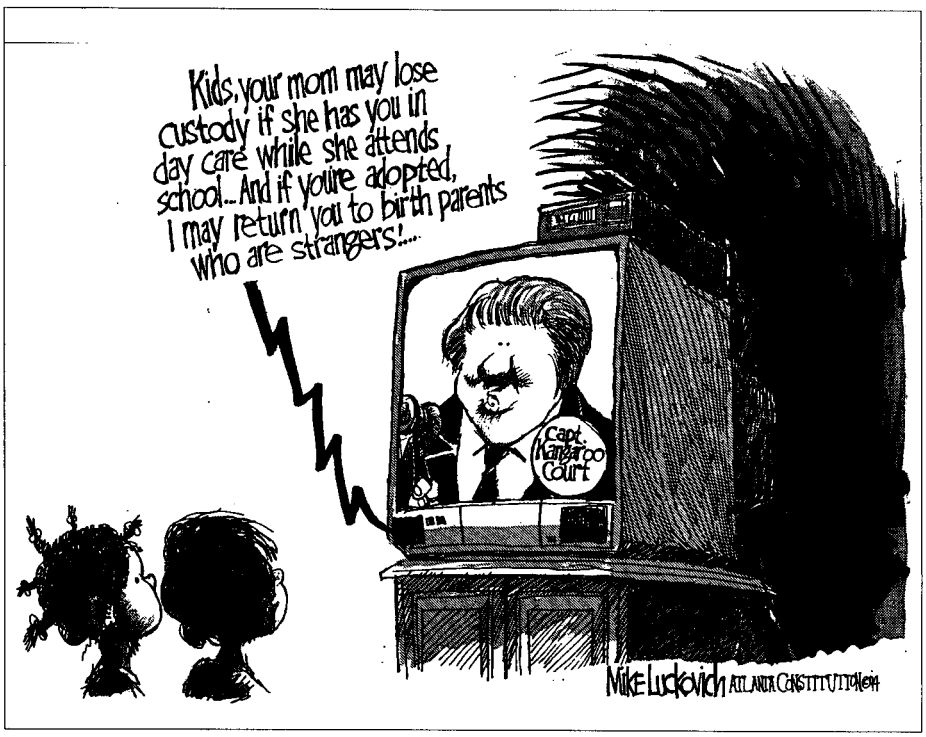
But politeness is a social construct, and my view is a minority opinion. So after nearly 15 years of answering such questions from friends, acquaintances, people I've just met at conferences or cocktail parties, store clerks, cab drivers, manicurists, and, most recently, the customer-service operator who changed my Sprint PCS phone number from Los Angeles to Dallas, I have given up. I guess my procreational plans, or lack thereof, are the world's business.

I like kids, but I don't expect to have any of my own. I'm 40 years old and spend most of my time working. I'd be a terrible mother. Now you know.

I'm telling you this not because it's any of your business—it isn't—but because, like many formerly private matters, parenthood has become a political issue and nonparents an aggrieved interest group. Despite their incessant talk of "inclusion," "tolerance," and "diversity," both Democrats and Republicans are working assiduously to divide America into two classes: parents (or, more accurately, parents with children at home), who are important and valuable, and everyone else.

The Republicans may be the party of "family values," but we can thank the Clinton administration for turning the New Discrimination into a major public policy. The first bill President Clinton signed was the Family and Medical Leave Act, whose main point is to give new parents the right to quit their jobs for three months, leaving the work to be picked up by unmentioned co-workers. Earlier this year, Clinton ordered new Labor Department regulations to encourage states to make that leave paid, by letting new parents collect unemployment insurance during their voluntary absence. (So far, no state has taken up the idea.) He has also proposed that federal law add parents to the list of groups protected against workplace discrimination—a formula that would inevitably punish companies that give childless workaholics greater pay and more promotions than they give soccer moms and dads.

When candidate Al Gore talks about "tax cuts for working families," he's engaging in not one but two forms of class warfare: against the higher-income people who pay most of the country's income taxes (and presumably vote Republican) and against workers of all incomes who don't have dependent children (and who often vote Democratic). The Clinton administration's tax policy has been almost entirely geared to reward parenthood with various tax credits.


Kids, your mom may lose custody if she has you in day care while she attends school... And if you're adopted, I may return you to birth parents who are strangers!...
Capt. Kangaroo Court
Mike Luckovich ATLANTA CONSTITUTION

MIKE LUCKOVICH

The Republicans have mostly gone along with, and often sought to top, the administration's bias. Gone is the goal of neutral tax-rate cuts, in favor of the new gospel of behavior modification and interest group payoffs. In her often caustic book, *The Baby Boon: How Family-Friendly America Cheats the Childless*, Elinor Burkett calls the 1997 tax cut, which included a $500 tax credit for children, "the most massive redistribution of wealth since the War on Poverty—this time not from rich to poor, but from nonparents, no matter how modest their means, to parents, no matter how affluent."

The trend shows no signs of abating. Analyzing George W. Bush's Republican convention, David Brooks of *The Weekly Standard* suggests that it marked a turning point, transforming the GOP "from a work party to a home party." Instead of the traditional Republican celebration of entrepreneurs and workers, he writes, "this convention worshipped the child-rearer." It was a perilous strategy for a candidate best known as his parents' son, but perhaps an understandable one.

Conservative intellectuals, meanwhile, incessantly declare that "the" purpose of family life is to raise children. Follow this

rhetoric and pretty soon the childless are not merely second-class citizens, but fake families and quite possibly less than fully human. Women's lives, in particular, are meaningless if they have not, in author Danielle Crittenden's words, "brought into this world life that will outlast us." Without kids, she suggests, a life's work amounts to a mere "pile of pay stubs." So often does this attitude emanate from the Independent Women's Forum, a group of high-profile conservatives including Crittenden, that some of its own disgruntled members have taken to throwing around the phrase "mommy nazis" to describe the ideologists of mandatory motherhood.

Nonetheless, it's hard even for me to sympathize with some of the organized childless—or "child free," as they prefer to be called. Burkett and her followers can be just as intolerant as their foes. Too often, they seem to hate both children and their parents. They have the blinkered anger of self-styled victim groups. And, like their opponents, they show little understanding of the relation between employment and compensation.

Politicizing parenthood reduces our ability to accommodate differences and to benefit from them. When government decides on one best way to live, it creates citizens who matter and those who don't.

In Burkett's view, providing "family-friendly" benefits, such as on-site day care or health insurance for family members, violates the sacred principle of equal pay for equal work. So does expecting workers without children to be more flexible or to work longer hours than people with kids. Accommodating employees who need time off for family responsibilities is, in Burkett's assessment, a form of discrimination, because people with kids will almost always ask for more flexibility than those without them.

The problem with this view—and with the contrary Clintonian vision of legally obligated privileges for parents—is that it ignores the explicit and implicit bargaining through which employers and employees come to terms. A day care center may not matter to most employees, but it may be essential to attract certain workers. A lawyer who bills more hours than most of the firm may demand, and get, the opportunity to bring her baby to work, even if some of her colleagues think it's weird. To hire and hold talented people, employers have to give them what they want, and that won't mean a one-size-fits-all package.

"From where I sit, the increasing insistence by employees that employers accommodate their lives has been a welcome revolution," writes Lisa Belkin in a recent *New York Times Magazine* cover story on the "backlash against children." She has two young sons and likes working at home on a flexible schedule. What she doesn't say is that the *Times* gives her that privilege not because of laws or regulations, or because the paper is a humane, understanding place (it notoriously isn't), but because she's unusually good at what she does. Even the *Times* can be accommodating to keep its most talented writers.

But Belkin is never going to be managing editor of the *Times*. In fact, as long as she needs those flexible hours, she isn't going to be a manager of any kind. Other people, with work schedules that often stretch late into the night, bear the burdens that make lives like hers possible. Many of those people have no children.

But these people aren't victims. They are striking their own bargains, bargains that differ from those that conscientious parents insist on. After all, people without children do have the freedom to do things that caring parents with dependent kids can't—to work long hours, to travel frequently, to relocate, and to do all these things on short notice if necessary. In return, they can achieve positions that devoted parents can't. Barring laws to the contrary, the people who put more time and energy into their work, and who are good at it, will reap greater rewards.

Politicizing parenthood reduces our ability both to accommodate differences and to benefit from them. By announcing that society has decided on one best way to live, it creates winners and losers, citizens who matter and those who don't.

The great insight of classical liberalism was that government neutrality in matters of faith and conscience would foster social peace. The same is true of parenthood, which is equally personal and thus equally explosive. Allowing people the freedom to make varied arrangements—from family-friendly workplaces to (currently illegal) child-free apartment buildings—won't eliminate all conflicts. But it gives people fewer causes for grievance and more ways to alleviate life's stresses.

Society needs both parents and nonparents, both the work party and the home party. While raising children is the most important work most people will do, not everyone is cut out for parenthood. And, as many a childless teacher has proved, raising kids is not the only important contribution a person can make to their future. The children who are "our future" will inherit a world created not just by parental devotion but by the sort of zealous, focused endeavors that can preclude good parenting.

As Francis Bacon observed four centuries ago, "The perpetuity by generation is common to beasts; but memory, merit, and noble works are proper to men. And surely a man shall see the noblest works and foundations have proceeded from childless men, which have sought to express the images of their minds, where those of their bodies have failed. So the care of posterity is most in them that have no posterity."

Bacon, writing under the rule of the Virgin Queen, leaned too far toward the party of work. The republican Constitution that seeks to "secure the blessings of liberty for ourselves and our posterity" does not play such favorites. Neither should those who govern under it.

Virginia Postrel (vpostrel@reason.com) is REASON*'s editor-at-large and the author of* The Future and Its Enemies.

Walter Olson

All About Erin

Heroine of screen and courtroom Erin Brockovich deserves a prize, all right. But not for what you think.

It took a few months for the investigative journalists to overtake the Hollywood dream spinners, but by now it's been pretty well established: What got left out of the blockbuster movie *Erin Brockovich* (now available at a video store near you) was in many ways juicier than what got put in.

You're probably familiar with the basic Erin story, as portrayed by the winsome Julia Roberts in a critically acclaimed performance. A spunky, foul-mouthed single mother down on her luck, Erin gets herself hired with no experience for a routine job at a Los Angeles personal injury law firm. Soon she stumbles into evidence that the townspeople of little Hinkley, California, are being poisoned by pollution in the water table originating with giant utility Pacific Gas & Electric, which runs a plant there. Brockovich begins doggedly accumulating evidence, convinces the lawyers in her firm they've got a case, and recruits townspeople to sue. Eventually, without admitting guilt, the utility coughs up an impressive $333 million settlement, a record for this kind of case.

Not only did this result provide much-needed financial balm for both the townspeople and our heroine, but all the lawsuit organizing, as the writers at Oprah.com explain, assisted Brockovich in the task of "finding her true self." Although she'd started out in life as a beauty pageant winner, winning the trust of the Hinkley townspeople "enabled Erin to grow and realize that inner beauty is most important."

In fact, the challenge of working on the suit "allowed Erin to productively channel all of her pent-up anger and frustration and realize her purpose in life: helping others." Litigation as a road to inner peace and helping others: It's certainly an unusual story.

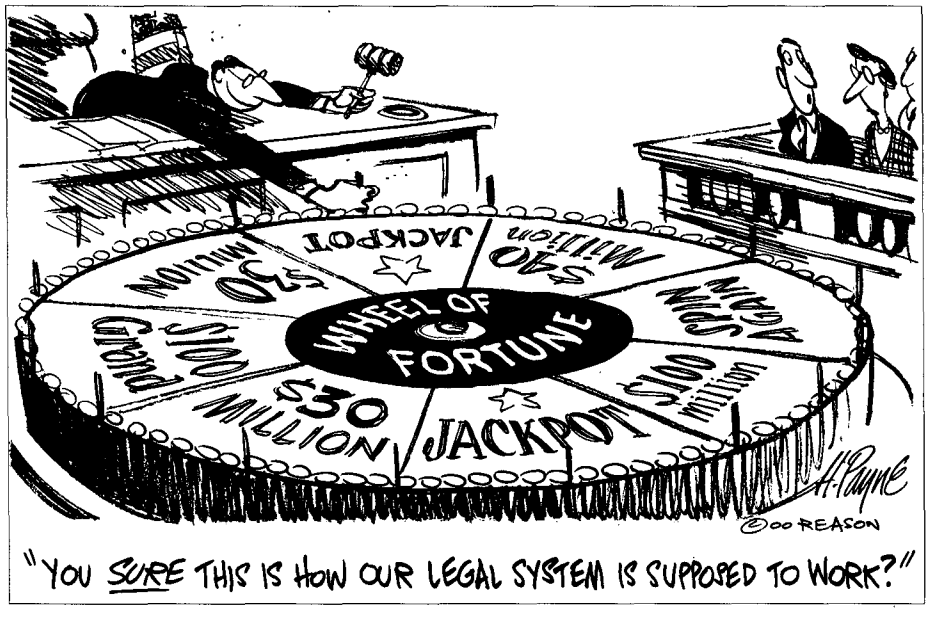
After she spent years helping others, what more appropriate reward for Brockovich than to become the most famous environmental litigator in history, as by now she surely is? Though technically not a lawyer (her title at the California law firm of Masry & Vititoe is "research director"), she's won more prizes and commendations than just about any regular lawyer you could name, including the Association of Trial Lawyers of America's Champion of Justice Award, presented last July at its annual convention in Chicago; similar prizes from the California and Santa Clara County trial lawyer groups; commendations from the County of Los Angeles and the California Assembly; and the Court TV "Scales of Justice" Award.

Clearly not unpleased at this nearly universal adulation, Brockovich has embarked on a career of touring the country to organize more toxic tort suits by communities in Pennsylvania, Idaho, and elsewhere.

Just as all this personal growth and feistiness and indomitability were getting to be more than you could stand, along came critics who began sniping at the movie's account of the Hinkley case. The first wave included such writers as Hudson Institute investigative science journalist Michael Fumento (a contributor to this magazine), ABC *20/20* correspondent John Stossel, and *New York Times* science writer Gina Kolata. The headline above Kolata's *Times* account sums up the main line of critique: "A Hit Movie Is Rated 'F' in Science."

Few cases in this country of "disease clusters" linked to chemicals in groundwater have actually panned out upon investigation. Even the famous Woburn, Massachusetts, case dramatized in the book and movie *A Civil Action* (see "A Woburn FAQ," April 1999) left more questions than answers about whether a suspicious number of childhood leukemia cases had arisen from anything in the water supply.

Only rigorous science can answer such questions as: Are people who drank water from a suspect source sicker than comparable populations elsewhere? If so, do they suffer from a particular, distinctive set of recurring symptoms (such as mercury-induced "Minimata disease" in 1950s Japan), or do they instead complain of a wide assortment of common ailments? Was the chemical exposure heavy, or something measured in parts per million or billion, only slightly above a threshold drawn to err on the side of extreme caution? And if the latter, are claims of



HENRY PAYNE

injury from minor exposure consistent with what's known to happen to workers or others who get exposed to much higher concentrations of the same substance?

In the Hinkley case the alleged culprit was a pollutant called chromium-6, or hexavalent chromium. To judge by Fumento's account, the problems with this theory were much the same as those commonly found in other toxic tort cases: The levels of contamination were orders of magnitude lower than those needed to induce health effects in experimental animals; the lawyers were seeking to blame the chromium for a wide assortment of ailments with no likely common origin; and science has not shown chromium-6 to be a particularly lethal substance when ingested in trace quantities in drinking water. (When inhaled, as in welding fumes, chromium-6 has been shown to cause cancer of the nose and lung, but very little can be inferred about the dangers of one route of exposure from the other.) Studies of persons known to have been exposed to waterborne chromium-6 in Glasgow, Scotland, and elsewhere fail to confirm the Hinkley claims.

Brockovich, to be sure, disputes most of this critique. She told journalist Kathleen Sharp (about whose *Salon* article we will have more to say in a moment) that she found "hundreds" of references in the scientific literature to a clear-cut pattern of toxicity from chromium-6.

But Sharon Wilbur, a toxicologist at the U.S. Department of Health and Human Services, told Sharp a very different story, namely that "chromium 6 in water doesn't harm humans. 'It's very unlikely that people could die from drinking chromium 6 in the water, even over time,' she said." Moreover, health studies found that the utility plant's own workers, who were likely exposed to at least as much pollution as neighbors were, had a life expectancy exceeding the California average.

If it had such good defenses, why did PG&E cough up $333 million to settle the case? Unlike most mass personal injury cases, the Hinkley matter was settled in private arbitration, which means we know less about how it was fought, and which arguments were raised, than we would had it proceeded in conventional litigation. But in her impressive investigation in *Salon*, Sharp unearths a few reasons why the utility might have ended up with such an unfavorable resolution of the case.

One was that, if you credit allegations from the Brockovich side of the case and other sources, the first set of lawyers PG&E used may have engaged in misconduct, including privacy invasion by hired gumshoes, that would have caused a furor if proven.

The headline of the *Times* account sums up the critique: "A Hit Movie Is Rated 'F' in Science."

Additionally, it later developed that the two L.A. lawyers who teamed with Brockovich's firm to handle the case, Thomas Girardi and Walter Lack, were on unusually friendly terms with some of the judges in the arbitration, who had joined the arbitration firm JAMS after retiring from the regular California bench. One judge had officiated at Girardi's second wedding, another had flown in Girardi's Gulfstream to attend the World Series, and so forth. Laurence Janssen, a partner in the L.A. office of the Washington law firm Steptoe & Johnson, told Sharp: "I became aware that I should absolutely stay away from JAMS or its retired judges when it came to any dealing with Tom Girardi ...The common lore imparted to me was that it would be crazy to get in front of any JAMS arbitration with Girardi."

Not long after the case was settled, generating $133 million in lawyers' fees, Girardi and Lack just happened to invite the three Hinkley case arbitrators to join a week-long Mediterranean cruise for 90 guests, including 11 public and private judges, on a chartered ship. "One judge," reports Sharp, "called it 'absolutely incredible.'" A luxury yacht floated on azure waters; tuxedoed butlers balanced silver trays of free champagne; young bikini-clad ladies frolicked on the sun-splashed deck, according to retired Judge [William] Schoettler, who was a guest. As another bare-chested judge remarked at the time: 'This gives decadence a bad name.'"

Naturally, this was all done for strictly educational purposes, under the aegis of a group Girardi and Lack ran called the Foundation for the Enrichment of the Law. Girardi told the *Los Angeles Times* that the trip included "an extensive professional program," which is supposed to make it OK under ethical rules, but Sharp reports that "retired judge Schoettler can't recall anyone he knew actually attending a lecture." Eventually, the judges agreed to pay their expenses for the trip; the outcry over the cruise helped spur a California Supreme Court inquiry into the arbitration.

Not a frame of this remarkable epilogue to the case, of course, made it into the movie *Erin Brockovich.* And the movie was equally misleading, it seems, in depicting a grateful Hinkley populace winning big. In the real world many of the Hinkley clients feel they got the shaft from Brockovich's firm of Masry & Vititoe, and are now proceeding to sue them. Specifically:

- Of the $333 million settlement paid by PG&E, the lawyers kept a handsome 40 percent ($133 million) share, plus another $10 million to cover expenses. The clients say they were short on detail to back up the latter number. Worse, they say Masry, Brockovich, et al. held onto their money for six months after the settlement, a delay that appeared highly irregular to the experts Sharp checked with, while not paying interest or even returning their phone calls (the lawyers say the payments did include interest). Some with large awards also got steered toward certain financial advisers, among them Ed Masry's son Louis.
- When the payouts eventually came, many clients found the division of spoils mysterious, arbitrary, or worse. Divided among the 650 plaintiffs, the announced $196 million would provide about $300,000 per client. But an outside lawyer who interviewed 81 of the plaintiffs was told they received an average of $152,000, and Sharp reports that many long-term residents with presumably documented

medical ailments got payments of $50,000 or $60,000. The allocation among clients was kept secret, which means they couldn't get an accounting of who received what—gotta protect the privacy of the other plaintiffs, right?

Moreover, writes Sharp, "there was no mention of the criteria, formula or method by which the money would be divided," other than a statement that the amounts would be based on clients' medical records. Yet some residents say their medical records were never solicited. One elderly, ailing resident "blew up at one of the attorneys, who didn't like his attitude," according to a fellow townsman, and "got a real bad deal," allotted in the end only $25,000. "Fairly or not," writes Sharp, "some residents say they saw a pattern in the distribution method. 'If you were buddies with Ed and Erin, you got a lot of money,' said [client Carol] Smith. 'Otherwise, forget it.'"

■ Many clients (as well as members of the press) say they were unable to keep track of the case's progress as it moved through arbitration. "We had no idea what was going on and weren't allowed to watch," one plaintiff told Sharp. With help from the plaintiffs' lawyers, Universal Studios, which made the movie, obtained a copy of the trial transcript—more than many of the actual plaintiffs in the case have yet managed to do.

When Sharp attempted to interview the lawyers on the Brockovich team, the resulting conversations were "short and explosive and terminated abruptly by the lawyers." And when an outside lawyer took an interest in the disgruntled clients' case, Masry and fellow lawyers at once seized the offensive, suing him for allegedly slandering them and interfering with their business relationship with the clients; this slander suit was filed, then dropped two weeks later, then reinstated, then dropped again.

So if you want to know how to win some of the most coveted prizes and accolades handed out by the American legal establishment, ask Erin Brockovich. She knows all about it. ◆

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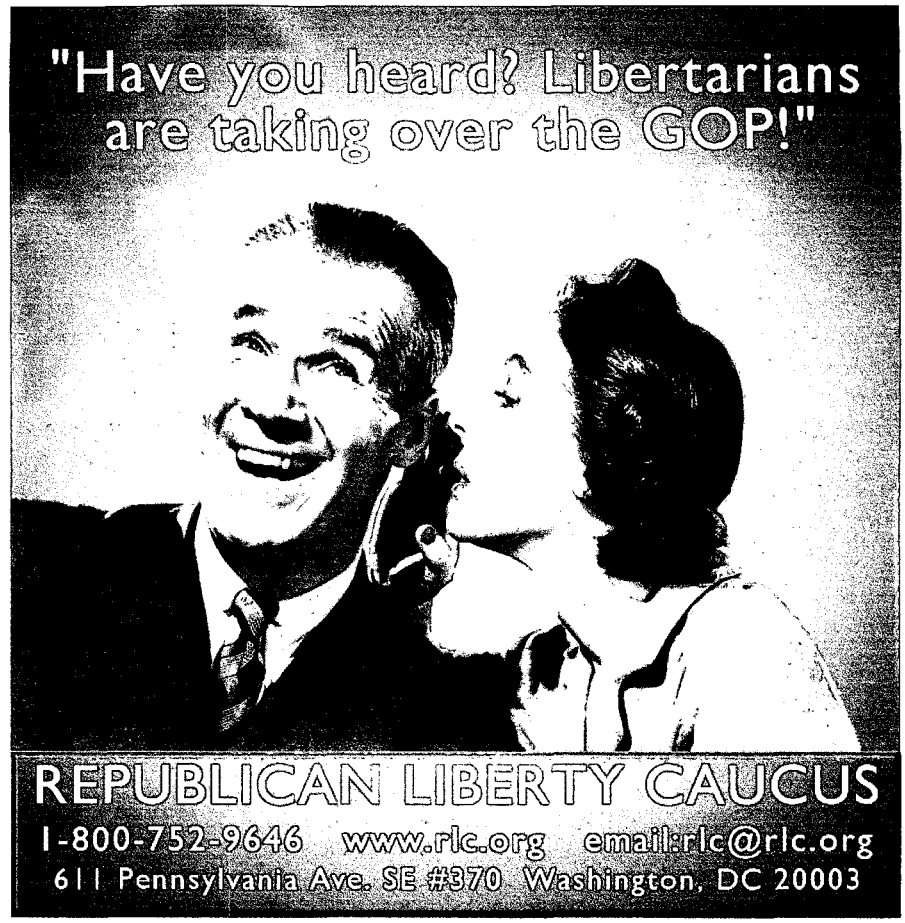
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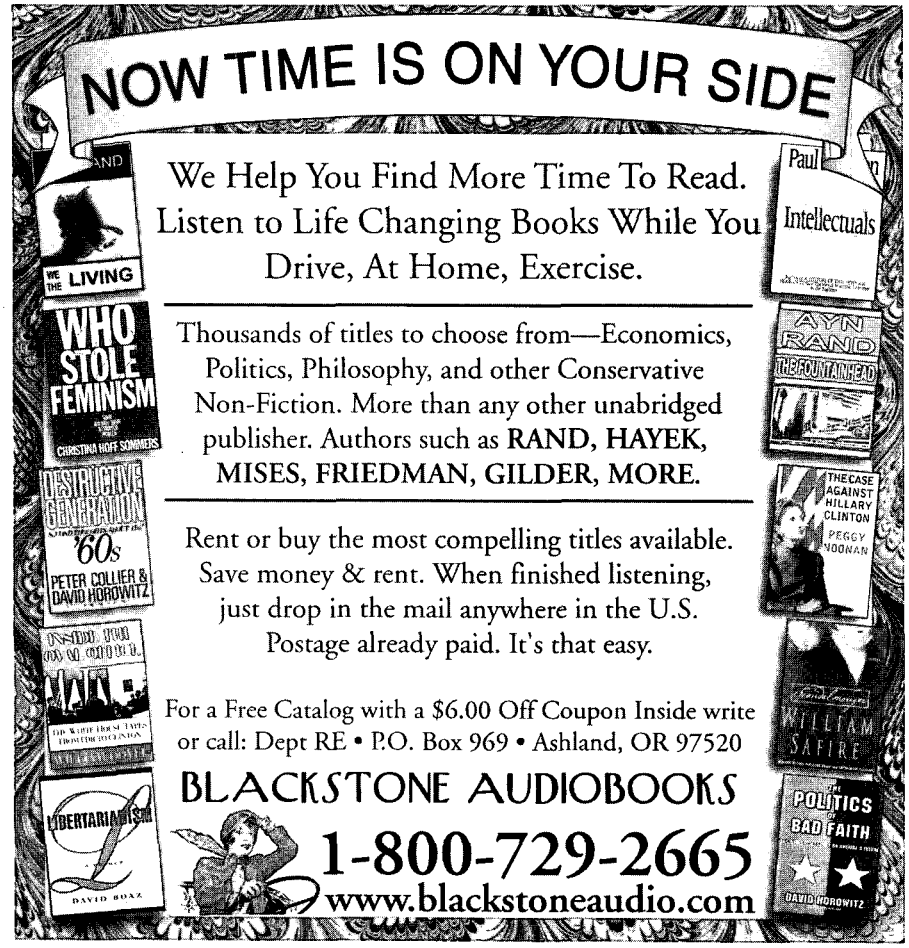
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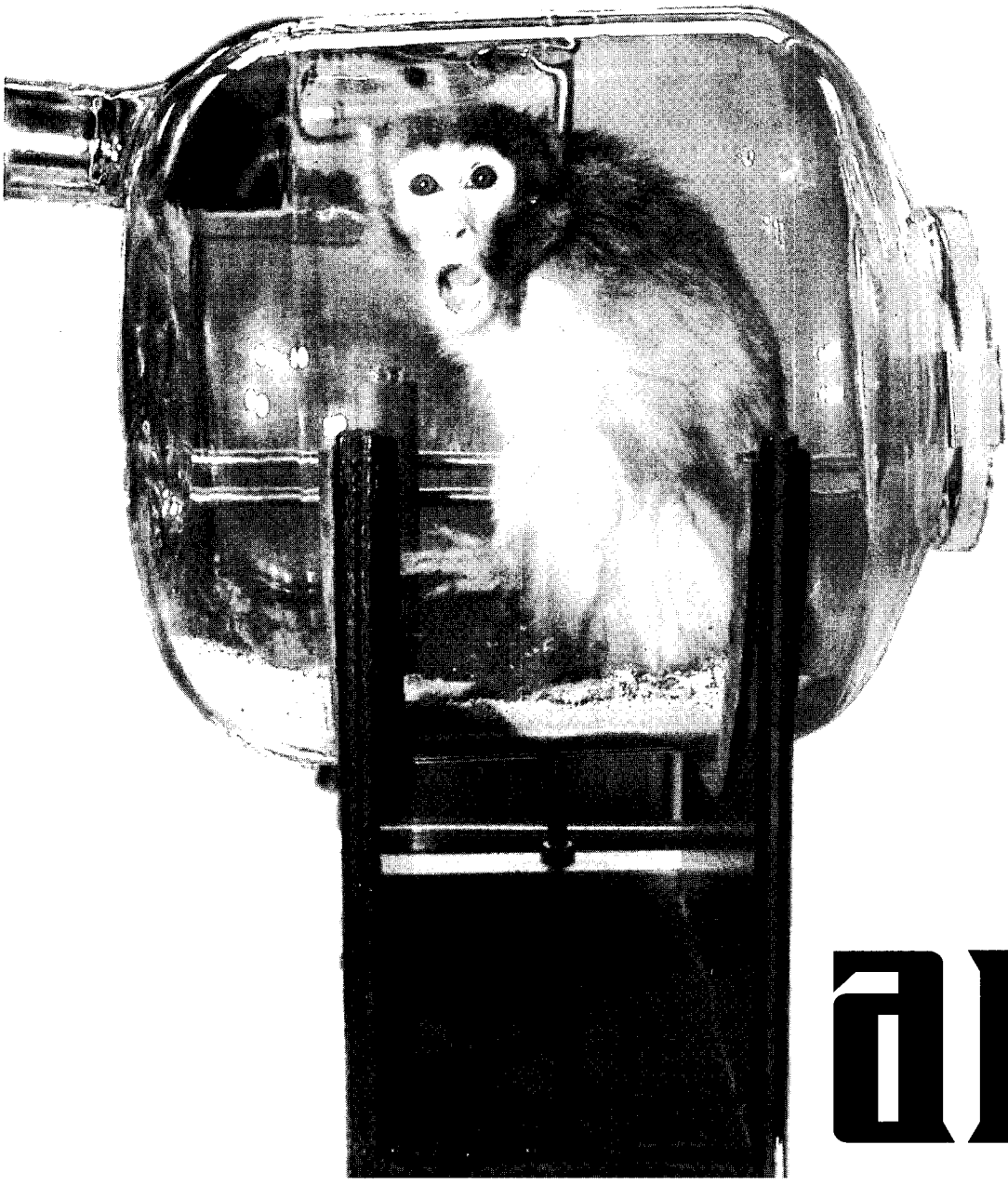

and

Self-doubt

Why animal researchers must remember that human beings are special

By Frederick K. Goodwin and Adrian R. Morrison

Twenty years ago, animal research became the target of a new generation of anti-vivisectionists: the radical "animal rights" movement. That movement, which views animals as moral agents on a par with people, has promoted a profoundly confused philosophy that equates animal research with the enslavement of human beings.

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Scientists responded to this movement by proposing to strengthen the standards and regulation of animal research and care. But even as the handling of research animals became ever more restricted, the animal rights campaign became ever more demanding and violent. Scientists working with animals, especially those involved in brain and behavioral research, were assaulted in their laboratories, harassed in their homes, and threatened with death.

In Europe, scientists have long been the target of actual terrorism, now identified as such by the United Kingdom. Indeed, the neuroscientist Colin Blakemore at Oxford University, who studies brain activity in cats, literally lives under siege. Police must protect his home, which has been assaulted with his frightened wife and daughters in residence. Why? He spoke out in support of the obvious necessity of using animals to advance medical science—to alleviate the suffering of human beings—and has been in danger ever since that principled act. In 1998, Blakemore and other European scientists were marked for death by animal rights terrorists, and Blakemore lived for months under round-the-clock police protection.

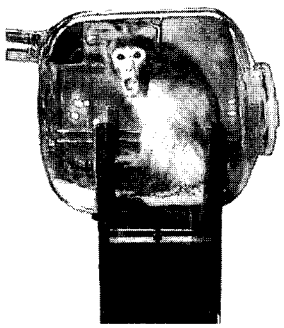
Although for a few years American researchers enjoyed relative peace, animal rights activists struck last spring at the University of Minnesota, causing thousands of dollars in damage. A scientist studying hearing at the University of California at San Francisco is now suffering what Blakemore has endured for years. But biomedical research is coming under another kind of siege.

There has been a campaign in New Zealand to give the great apes constitutional rights, an outgrowth of the ideas of the animal rights movement and the Great Ape Project, which seeks to award apes the same rights as those possessed by humans. Last year in Germany, the ruling Social Democratic and Green parties introduced legislation stating that animals have the right to be "respected as fellow creatures," and to be protected from "avoidable pain." Two recent developments in the United States suggest that we may be entering a dangerous era in thinking about animals.

In the first, a U.S. court recognized the legal standing of an individual to sue the federal government in order to force changes in animal-welfare regulations. In that case, the individual claimed "harm" as a result of seeing animals mistreated, in his opinion, at a roadside zoo; the plaintiff held the Department of Agriculture responsible. However, in deciding the merits of the case, an appeals court later found that USDA was not responsible for the individual's alleged harm, and declined to order any change in the current regulations.

In the second, animal rights groups are pushing USDA to include rats and mice under the Animal Welfare Act.

The campaign to end the use of animals in biomedical research is based upon a complete misunderstanding of how scientists work, what research requires, and what has made possible our era's outpouring of lifesaving advances in medicine. Unfortunately, neither their misunderstanding of science nor their misguided philosophy has prevented activists from becoming an increasingly powerful, militant force—one now threatening the discovery of new medical treatments and preventive strategies for serious illnesses.



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To understand the animal rights movement, we must distinguish its objectives from those of animal welfare organizations. Typically, such organizations as local societies for the prevention of cruelty to animals will care for strays, teach good animal care, run neutering programs, and build animal shelters. Acting as the stewards of animals, especially those not in a position to care for themselves, these organizations uphold our traditional values of humane, caring treatment of sentient creatures.

Animal rights organizations, on the other hand, invest their energies in campaigning against various uses of animals, including research. They start with a completely different philosophy, summed up by Peter Singer, the acknowledged founder of the animal rights movement, in his 1975 book, *Animal Liberation.* Singer, now De Camp Professor of Bioethics at Princeton University, argues that sentient creatures—all those capable of feeling pain—must essentially be considered moral equivalents to human beings, certainly as equivalent to the severely brain-damaged and to human infants before the age of reasoning. Anyone who dismisses any sentient creature as merely an animal to be used for human benefit is guilty of "speciesism," a prejudice morally equivalent to racism and sexism. (Singer, who is Australian, does not base his opposition to animal research on the concept of rights; his American counterpart, University of North Carolina phi-

losophy professor Tom Regan, does.)

On the political front, Ingrid Newkirk, the national director of People for the Ethical Treatment of Animals (PETA), asserted in 1983 that "animal liberationists do not separate out the human animal, so there is no rational basis for saying that a human being has special rights. A rat is a pig is a dog is a boy. They're all mammals." She has also said, "Six million Jews died in concentration camps, but six billion broiler chickens will die this year in slaughterhouses." Chris DeRose, who heads an organization called In Defense of Animals, said recently that even if the death of one rat would cure all disease, that death still would not be right, because we are all equal.

Despite PETA's view that broiler chickens are the moral equivalent of murdered Jews, animal rights activists decided early on to target scientific researchers, not farmers, although more than 99 percent of the animals used by people are for food (or clothing, or killed either in pounds or by hunters) and just a fraction of 1 percent for research. Singer has said that the strategic decision to level protests against science was made because farmers are organized and politically powerful (and live in rural areas, which makes them hard to get at). In contrast, scientists are not politically organized, live in urban areas, and can be hard put to explain their work in lay language.

Neuroscientists have been a frequent target. Two key fields of neuroscience, behavioral and addiction research, were highlighted in Singer's book. High-profile laboratory invasions have targeted scientists engaged in brain research. For example, PETA, which adheres to Singer's philosophy, established itself by infiltrating the laboratory of neuroscientist Edward Taub in Silver Spring, Maryland, in 1981, and "exposing" deficient laboratory conditions with photographs that purported to show animal mistreatment. Taub, however, has noted that no one else in the lab observed the conditions in the PETA photographs, and he is supported by the sworn statements of seven people, including a USDA inspector, who testified at Taub's subsequent trial. At the time, Taub was investigating how monkeys perform complex tasks with certain nerve pathways in their arms severed, work that was the basis for the subsequent development of improved methods for stroke rehabilitation.

In 1984, PETA exploited the Animal Liberation Front's invasion of the University of Pennsylvania Head Injury Research Laboratory by cleverly editing videotapes taken in the raid and using the resulting composite as a fund raising tool. In subsequent literature, PETA made it clear that alleged mistreatment of animals was not the real issue. In PETA's view, animals cannot be used to alleviate health problems of people, period. Even after more stringent government controls over animal research were in place (by 1985) Texas Tech sleep researcher John Orem suffered a raid in 1989 that resulted in $40,000 worth of damage to his laboratory. In this and other cases, however, the critical damage is to the scientist's will to continue research.

Many factors have contributed to the climate of moral confusion surrounding the use of animals in research and to the apparent willingness of many people to credit the bizarre ideas of the animal rights activists.

For one thing, we are victims of our own health care successes. We have enjoyed such a victory over infectious diseases that baby boomers and subsequent generations do not even remember polio and other dreaded infectious diseases, and have little sense of how amazing it was when antibiotics were first developed. With the eradication of so many deadly infectious diseases, antibiotics have become something that you take for incidental minor infection. The healthiest generation in history is a ripe target for the anti-science nonsense pushed by the animal rights movement.

Second, America has sustained a steady, devastating decline in scientific literacy. Our high school students consistently rank below those of other developed countries. As a result, most people, especially young people, do not understand what the scientific method is really about.

Additionally, Americans today spend little time around animals other than house pets. It is worth remembering that just before World War II one in four of us lived on a farm; now it is one in 50. What do most urban and suburban kids know about animals, other than what they see in cartoons?

Such factors have helped propel the ever-tightening regulation of research, stifling the creativity that is its essence and posing a threat to the human well-being that is its goal. Many major discoveries in the history of medicine have come about

pioneer Dr. Thomas E. Starzl begun his
ıumans, he would have killed at least 15 people.
is precisely what he should have done.

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by serendipity, when a scientist has had his sights trained on an entirely different topic of research. The story behind the initial discovery that lithium, an elemental substance on the periodic table, might have therapeutic benefits illustrates this serendipity and demonstrates how basic research with animals can lead to major medical advances.

In that case, Australian psychiatrist John Cade asked what might be wrong in the brains of patients with manic-depressive illness and wondered whether a substance called urea would have therapeutic value. Testing his hypothesis on guinea pigs, Cade gave them a salt form of urea, which happened to contain lithium. The guinea pigs became unexpectedly calm. Further experimentation revealed that the urea had nothing to do with this result; it was caused by the lithium—a complete surprise to Cade. Having laid his foundation with animal research, Cade extended his findings by giving lithium to manic patients, who experienced an alleviation of their manic excitement without being sedated. This single discovery has revolutionized treatment of manic-depressive illness, easing the lives of millions and saving billions of dollars along the way. At the same time, it has opened whole new productive areas for brain research.

No one could have predicted the outcome of Cade's initial experiment with urea. There was no way to list in advance what the health benefits of using guinea pigs would be. That would have required knowing the answer to a question that had not yet been asked. If one already knows the answer, research is unnecessary.

In 1976, before the animal rights controversy arose, the National Institutes of Health sponsored a study by Julius H. Comroe Jr. and R.D. Dripps to ascertain if government funding of basic biomedical research had been a good investment. The authors asked practicing cardiologists what they regarded as the 10 leading medical advances of their lifetimes; the scientists named such advances as cardiac surgery, drug treatment of hypertension, and medical treatment of cardiac insufficiency. Comroe and Dripps then traced the scientific ancestry of each of these discoveries and found that 40 percent of the studies leading to the advances originated from work in a different, seemingly unrelated field of research. Animal research was fundamental to many of these studies. Regulations that require justification of animal research in terms of its specific outcomes, rather than the clarity of the hypotheses and strength of the research design, may end much of the creative research now under way.

Less than a quarter of the studies in biomedicine involve animals (and more than 90 percent of those are rats and mice), but anyone working in the field will tell you that such animal studies are indispensable. One cannot develop an understanding of a chemical or a gene, then try to ascertain its role in a complex human organism with billions of cells and dozens of organs, without first knowing how it works in the biological systems of animals. The animal model enables a scientist to understand what is happening at a level of detail that could not be reached in humans.

Ingrid Newkirk, the national director o of Animals, has said, "Six millior but six billion broiler chickens will die this yea

The great kidney transplant pioneer Dr. Thomas E. Starzl was once asked why he used dogs in his work. He explained that, in his first series of operations, he had transplanted kidneys into a number of subjects, and that the majority of them died. After figuring out what had enabled a few to survive, he revised his techniques and operated on a similar group of subjects; a majority of them survived. In his third group of subjects, only one or two died, and in his fourth group all survived. The important point, said Starzl, was that the first three groups of subjects were dogs; the fourth group consisted of human babies. Had Starzl begun his series of experimental operations on people, he would have killed at least 15 people. Yet there are activists who believe, in the name of animal rights, that that is what Starzl should have done.

At the outset of their encounter with the animal rights movement, scientists made a disastrous tactical error. Accustomed to dealing with others by reason, and eager to meet the activists halfway, the research community adopted "The Three Rs," described as long ago as 1959 by W. Russell and R. Birch in their book, *The Principles of Humane Experimental Technique.* Scientists pledged to *reduce* the number of animals used, to *refine* their techniques, and to *replace* animals whenever possible. In truth, scientists are always looking for ways to reduce, refine, and replace animal use. It makes sense from the point of view of humane treatment, the economics of research and, often, science.

But this response came across as a confession of guilt. Although scientists accept high standards for the use and care

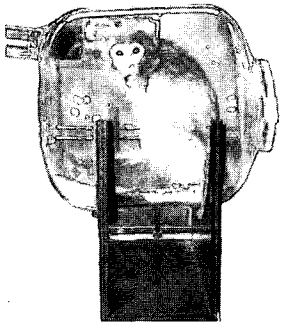
of research animals, they are not engaged in some kind of "necessary evil." Appeasement is a losing game. To make concessions on a matter of principle is to concede the principle itself. Then defeat is only a matter of time, as opponents demand complete consistency with their own principle.

"Rights," the idea that the activists are working so hard to enlist in their cause, are a moral concept. Rights stem from the uniquely human capacity to choose values and principles, then act on choices and judgment. Within that context, rights are moral principles stating that, as human beings with the ability to develop and act on moral judgments, we must leave each other free to do so. That is the basis of our claim to political and personal freedom. Rattlesnakes and rats, tigers and sheep, and even our closest animal relatives, chimpanzees, exhibit no ability to comprehend, respect, or act upon rights.

timated 7 percent of research does employ procedures causing pain in order to understand pain mechanisms in the central nervous system. This kind of experimentation has enabled us to develop effective painkillers.

Activists claim that animal experiments are duplicative. The reality is that today only one out of four grant requests is funded, a highly competitive situation that makes duplicative research scarce. But research does have to be replicated before the results are accepted; and progress usually arises from a series of small discoveries, all elaborating on or overlapping one another. When activists talk about duplication, they betray a fundamental misunderstanding of how science progresses. Nor do they understand scientists. What highly trained, creative individual wants to do exactly what someone has already done?

People for the Ethical Treatment
lews died in concentration camps,
in slaughterhouses."



The "law of the jungle" is no law at all. Indeed, the concept of rights is profoundly incoherent when applied to animals. It is worse than mistaken; it dangerously subverts the concept of rights itself at a time when human rights worldwide are in need of clear articulation and defense.

Focusing on the Three Rs without exposing and refuting the underlying philosophy of animal rights proved a public relations catastrophe. The research community's basic position should have been that human beings have a right to use animals for human purposes, but also have a responsibility to use animals humanely. The more we emphasized the Three Rs, the stronger the animal rights movement became, and the more money the radical activists raised. This was occurring at the very same time that science was demonstrating noticeable improvements in the handling of laboratory animals.

It is not sufficient for the medical-scientific community to expose the fundamental flaws in the philosophy of animal rights. It must be able to respond to the movement's other, more utilitarian, arguments against the use of animals in research.

Activists assert that animal research is cruel. But their argument misses the point that experimenters usually want to disturb the animal as little as possible, since their goal is to study its natural response to whatever is being tested. An es-

Activists urge prevention rather than treatment. They say we should urge people to adopt measures such as an altered diet or increased exercise to prevent major illness, so that we would not need so many new treatments. But much of what we have discovered about preventive measures has itself resulted from animal research. You cannot get most cancers to grow in a test tube; you need whole animal studies.

Activists argue that we should use alternatives to animal research. A favorite example is computer simulations. But where do they think the data that are entered into computers come from? To get real answers, one has to feed computers real physiological data. There is an argument that researchers should use PET scans, which can provide an image of how a living human organ is functioning, as a way of avoiding the use of animals. It took Lou Sokoloff at the National Institute of Mental Health eight years of animal research to develop the PET scan methodology.

There are many other arguments. Activists say animal research diverts funds from medical treatment. But the United States spends only 37 cents on animal studies for every $100 it spends on treatment. We could divert all our research funds into treatment, and it would have no impact on sick people.

Activists say that pets are at risk, but more than 90 percent of the animals used in research are rodents. At the same time, about five million unwanted cats and dogs are killed in shelters every year, which comes to about 50 animals killed in shelters for every one that must be sacrificed in research.

One reason so many animals are killed in shelters is that animal rights organizations have diverted much of the funding from animal welfare organizations, so they cannot run adoption or neutering programs as well as they could with more funds.

Despite the weakness of their arguments, the animal rights activists have taken their toll on research. Nothing impairs creativity like fear. Today, scientists who work with animals are often segregated in high-security, bunker-like buildings, separated from their colleagues. In effect, biomedical research budgets are reduced by the costs of increased security and compliance with new regulations.

But the situation could get even worse. If the individual who sued the USDA had succeeded in gaining standing to sue on behalf of animals, a precedent would have been established that could have lead to mischief by those who would impede research. Should a future case succeed, an activist "plant" in a laboratory need only claim distress at the way animals are being treated to bring a nuisance lawsuit against the laboratory. Even now, an accusation of wrongdoing, no matter how trumped-up, will lead to weeks or months of work stoppage while the laboratory is being investigated by government agencies.

Including rats and mice (as well as birds) under the Animal Welfare Act, as the USDA has been urged to do, is more complicated. Viewed superficially, the proposal is not unreasonable. Rats and mice are animals, after all, and deserving of appropriate care. Their exclusion from oversight by the Department of Agriculture reflects the department's decision to focus available funds on monitoring the well-being of such animals as primates, dogs, and cats. But one need not be overly cynical to suspect that the real motive behind the push for inclusion is not a desire to protect the rodents' welfare so much as a wish to impede research by all means possible. Bureaucracy is expensive and enervating. The fact that the person leading this effort, John McArdle, once suggested in an interview that brain-dead humans are reasonable substitutes for animals as research subjects speaks volumes about the real agenda here.

Is there a proven problem concerning the welfare of these animals? The Association for the Assessment and Accreditation of Laboratory Animal Care International (AAALAC), the extra-governmental organization that intensively examines animal care programs at institutions striving to receive AAALAC's highly desirable seal of approval, has estimated that 90 percent of the rats and mice used in research are already overseen by either AAALAC inspections or those required by the U.S. Public Health Service. Many nonacademic institutions, such as pharmaceutical companies and commercial breeders, are covered by AAALAC inspections. Thus, the USDA would needlessly duplicate oversight programs already in place.

We live in an age of moral self-doubt. Some scientists and other individuals associated with biomedical research in supportive roles have begun to feel guilt over their use of animals. That has spawned a group calling itself the "troubled middle" (a rather presumptuous phrase, suggesting that only they care about the issues raised by animal research). Indeed, a whole industry has grown up around this sense of guilt, with constant, somewhat repetitive conferences focusing on how to oversee research, how to be the perfect member of an Institutional Animal Care and Use Committee, and how to find alternatives to using animals. These topics are not unworthy, but the conferences give short shrift to the perspectives of working scientists, who rarely appear as major speakers.

Scientists must be clear on what justifies animal research when necessary: that human beings are special and human life comes first.

Progress toward increased human well-being cannot flourish amid such self-doubt. Scientists and members of the public who support their work must recognize that they are engaged in a struggle for minds. Their own minds therefore must be clear about what justifies animal research when necessary: that human beings are special. Researchers and others must appreciate the value of such work, and must be ready to state unequivocally and publicly that human life comes first. We who work with animals, and those who support the benefits of that work, have made a moral choice, and we must be willing to stand by it.

Frederick Goodwin, M.D., is a former director of the National Institute of Mental Health. Adrian Morrison is a professor of veterinary medicine at the University of Pennsylvania. This essay is adapted from an article that originally appeared in Cerebrum: The Dana Forum on Brain Science.

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Music for

Why Napster isn't the end of the world. Or even the music industry ▪ By Jesse Walker

Nothing

When disco died, the record industry did not start taking new wave bands to court, demanding that they stop competing with the Bee Gees and kindred has-beens. It went hunting for every Ric Ocasek clone it could find, intent on exploiting the latest Next Big Thing until audiences found it as intolerable as disco.

More recently, much as one generation of listeners decided that it was tired of buying Donna Summer albums, another has decided that it would like to download music on demand from the Internet. With the big labels apparently uninterested

K. BLACKMUN

Digital file sharing is here to stay, whether or not Napster prevails in court.

in responding to this consumer preference, online alternatives emerged, sporting odd names like Gnutella, Scour, IMesh, CuteMX, and—most famously—Napster.

This time, rather than respond to audience demand, the industry called its lawyers.

Napster was created last year by Shawn Fanning, at the time a freshman at Northeastern University; he has since left school, hoping to turn the program he invented for the hell of it into a profit-making business. Before Napster, fans traded MP3s (the most popular digital music format) either directly, through e-mail, or through Web and FTP sites, most of which shut down after the music industry threatened litigation. Napster and Macster, the company's program for Macintosh users, let you search the hard drives of other Napster and Macster users via a network of servers, then download recordings directly from the other computers.

Napster wasn't the first effort to make file trading quicker, easier, and richer with options, but it was the first that worked well enough to take off: It has been downloaded millions of times—free of charge—and is especially popular in broadband-equipped offices and college dorms. (On some campuses, Napster has been so popular that users have clogged up the data lines, prompting some universities to ban, or try to ban, the program.)

For people without high-speed connections, though, this is a revolution in its buggy phase—in more ways than one. A download might take 30 minutes rather than three, and it's not unusual—in my experience, it has happened far more often than not—for the transfer to break off before it's done, presumably because the other party has turned off her computer. With these technical barriers limiting the range of people who can get much value out of the program, the range of music available has also suffered, though this seems to be improving with time. In addition, many files are mislabeled or incomplete.

Despite this, the music industry is up in arms—or, more precisely, in legal briefs.

Utopia or Oblivion

Like the Net itself, Napster and its progeny have provoked both utopian and apocalyptic rhetoric. By providing a relatively easy way to duplicate and distribute music without paying musicians, songwriters, labels, stores, or anyone else, these programs will, we're told, either a) erase the incentive to write and record songs, thus destroying the glorious cornucopia that is the American music business, or b) liberate artists and consumers from the grips of the giant record combines, thus destroying the terrible empire that is the American music business.

Given the bugs in the system, those fears and hopes have more to do with the programs' potential than with their effects thus far. One might expect musicians, songwriters, and labels to use this grace period to figure out how they'll adapt to the Internet age, much as their forefathers came up with ways to profit from earlier technological revolutions.

When radio became a mass medium, for example, musicians and songwriters initially objected strenuously to anyone playing records on the air. By giving away music for free, they argued, stations undermined their ability to make a living. In the 1920s, radio stations refused to pay anything for the music they broadcast, a situation that ended only after the American Society of Composers, Authors, and Publishers took the matter to court; copyright owners subsequently received royalties each time their songs were aired. They soon discovered that they could profit from airplay in other ways: Radio turned out to be excellent advertising for records and concerts. Similarly, Napster enthusiasts often promise that their program could become "the new radio"—a way to get the word out about new music without fighting for a place on a restrictive radio (or video) playlist.

History thus suggests that online file-trading won't kill the music industry. But it does have the potential to alter it radically, redistributing power to listeners and, perhaps, to artists. When the smoke clears, the music business will be stronger, in the sense that there will be more people making music, and making money from music, than ever before. The hierarchies that now dominate that business, however, will be shaken, flattened, chopped, and stewed.

So it's no wonder that the commanding heights of industry, even as they struggle to adapt to the Internet, are trying harder to make the Internet adapt to *them*. With the counsel of the Recording Industry Association of America, the big labels have sued Napster, arguing that the program is infringing their copyrights and causing "industry harm"—i.e., reduced CD sales. The National Music Publishers Association has filed a similar suit of its own, as have the rock band Metallica and rapper Dr. Dre. (Defending his suit, Metallica drummer Lars Ulrich has commented that he finds it "sickening to know that our art is being traded like a

commodity rather than the art that it is." One wonders why he sells his music at all, if it's "being traded like a commodity" that bothers him so.) Other musicians, such as Limp Bizkit and Chuck D, have endorsed the program, with Chuck D crediting it for "creating new fan interest and establishing a new infrastructure for unknown artists to attract an audience."

Napster may or may not prevail in court, but its lawyers have come up with an interesting array of arguments. Under the Audio Home Recording Act of 1992, the company contends, *any* noncommercial copying of music is fair use and thus legal. Citing the law's legislative history, Napster's attorneys make a strong case that Congress "deemed taping CDs or records borrowed from friends, and giving copies of one's own CDs or records to friends, to be synonymous with 'personal use,' 'private copying,' 'home use,' and 'private use,'" all of which are explicitly legal.

For its part, the RIAA contends that there is a difference between a right to copy and a right to distribute, and that copying for your immediate friends is not the same as copying for "countless third party strangers." More powerfully, it notes that the Audio Home Recording Act isn't supposed to apply to computers.

Napster also points to a significant precedent set by the Supreme Court. In 1984, the high court ruled that Universal Studios could not prevent Sony from introducing the Betamax VCR just because the machine *could* be used for pirating videos, noting that the "sale of copying equipment, like the sale of other articles of commerce, does not constitute contributory infringement if the product is widely used for legitimate, unobjectionable purposes, or, indeed, is merely capable of substantial noninfringing uses." In 1999, the RIAA sued Diamond Multimedia, maker of a portable MP3 player called the Rio, on the grounds that the device facilitates piracy. A federal appeals court ruled in Diamond's favor, citing the Betamax decision as a precedent.

Given that many artists are deliberately offering their music for free online as a way of making a name for themselves, it's easy to argue that there's more to Napster than piracy—and, thus, that it shouldn't be banned.

This argument is undercut by the uncomfortable fact that the vast majority of Napster searches—87 percent according to the RIAA, though Napster naturally disputes that figure—are for copyrighted material. It is further undercut by some embarrassing internal e-mails uncovered in mid-June. In one message, a Napster executive flatly states that the program's users "are exchanging pirated music"; in another, a manager comments that "admitting we know Napster is used for the transfer of illegal MP3 files might not be the best thing to do."

Napster's lawyers face no shortage of backup arguments—most radically, that attempts "to use the limited monopoly rights bestowed on a copyright holder to control competition in an area outside the scope of the copyright" constitute "copyright misuse," which "bars the copyright holder from enforcing its copyright unless and until its misuse is 'cured.'" Napster's brief argues that since the plaintiffs have themselves engaged in behavior comparable to Napster's—Sony, for example, sells "a portable listening device...that plays MP3 files, regardless of whether the files were made with the authorization of the copyright holders"—they clearly don't object in principle to such technologies. Their actual agenda, the brief continues, is to quell competition.

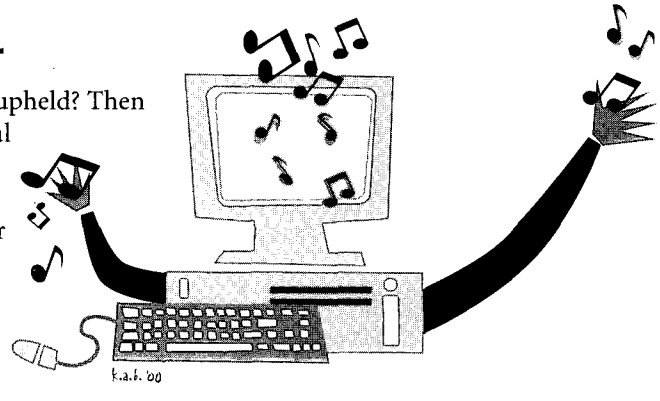
Morally, this is strong stuff. Legally, it's a bit more iffy.

The record industry appeared to win a major victory on July 26, when Judge Marilyn Patel granted a preliminary injunction ordering Napster to stop the trading until the issue was settled at trial. She also remarked that the RIAA had "a strong likelihood of success on the merits of the case," heaping special scorn on the defendant's interpretation of the Audio Home Recording Act. "It's irrelevant," she explained. "It doesn't apply to computers or hard drives. And Napster isn't an audio recording device."

Two days later, some unexpected news woke the plaintiffs from their champagne hangovers: An appeals court had stayed the injunction, arguing that the suit raises legal questions that have not yet been reviewed by the courts. The two-judge panel will either reverse or uphold the ruling in mid-September. If it's reversed, Judge Patel may well reconsider her initial reaction to Napster's legal arguments.

Beyond Napster

And if the injunction is upheld? Then little will change. Digital file sharing is here to stay, whether or not Napster prevails in court. As other programmers follow in Shawn Fanning's footsteps, software with even more radical im-

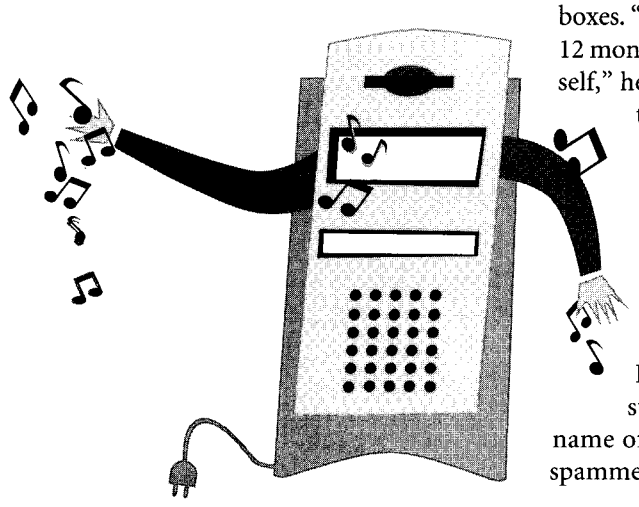


plications has appeared, bypassing both legal and moral arguments about intellectual property rights.

Napster may irritate the music industry, but at least it's a sitting target: It has an owner that can be sued, and it relies on a set of servers that can be shut down. Neither drawback afflicts Gnutella, a rival program created by Justin Frankel and Tom Pepper, the same people responsible for the popular MP3 player WinAmp. With Gnutella, every client is a server. There are no central stations through which file-swappers must pass; anyone can get any file—not just music—from anyone else, anonymously. And thanks to an unusual and still somewhat mysterious set of events, the program has no owner to sue.

Frankel and Pepper work for America Online. In March, when they announced what they were developing, AOL pulled the plug in less than a day, calling Gnutella "an unauthorized freelance project." There's been a lot of speculation as to what actually happened behind the scenes. AOL might have been genuinely unaware of what its programmers were cooking up; or it might have dumped Gnutella when it realized the program could provoke a Napster-style lawsuit; or it might have decided to dump it after its merger with Time Warner, a company with lots of copyrights to protect. Whatever happened, AOL's decision to cut the program free didn't suppress it: The source code was soon posted on the Net, and a network of programmers has been working to improve it ever since. (Anyone who'd like to can download the results from gnutella.wego.com.)

Gnutella isn't a perfect program either. "With no notion of whom to trust, a network will break down once it gets large enough," comments David Weekly, a recent Stanford graduate (he got his bachelor's degree in June) who created one of the Net's first MP3 jukeboxes. "Give Gnutella another six to 12 months, and it will have killed itself," he argues. "Not merely from the bandwidth concerns, but mainly from the fact that 0.1 percent of the Gnutella population might run a spam, and this would be enough to bring it down." (Already, a program called ShareZilla is on the market. If it performs the way it's supposed to, it'll attach the name of any Gnutella request to a spammer's file. Thus, a search for a Tupac Shakur bootleg might turn up an ad for an online casino instead.)



The Gnutella community may yet overcome such problems. And if not, they still might be solved by yet another program, Freenet, that's being developed by an Irish coder named Ian Clarke and the usual network of open-source geeks. Freenet promises far more autonomy and anonymity than are available now. It will be "completely decentralized, meaning that there is no person, computer, or organisation in control of Freenet or essential to its operation," the project's home page (freenet.sourceforge.net) explains. "This means that Freenet cannot be attacked like centralized peer-to-peer systems such as Napster." It also "learns to route requests more efficiently, automatically mirrors popular data, makes network flooding almost impossible, and moves data to where it is in greatest demand," thus solving some of the problems posed by Gnutella.

Freenet is still in its early stages of development, but it's already inspiring a lot of hand wringing. And with yet more lawsuit-proof programs undoubtedly on the way, one has to wonder whether the RIAA's legal strategy is sustainable in the long run. It might make more sense for the labels to ask whether such programs' popularity represents unmet demand.

Can the Man Bust Our Music?

Assume, for the sake of argument, that the industry's charges are true: that copying really is stealing, and that Napster is merely a giant burglary machine. Why, then, have so many people used it anyway? It is a matter of faith in some circles that America is undergoing a massive moral decline, but in fact, people don't seem more prone to stealing now than in the past. Indeed, according to the Bureau of Justice Statistics, property crime has been declining for more than 20 years. Why would someone who won't shoplift be more likely to use a file-swapping program?

The cynical answer is: *Because he can.* That is, given a choice between getting music for free or paying for it, people will take the freebie, especially if there's little risk involved. Obviously, there's some truth to this.

The most common answer among Napster's defenders is: *So he can sample music before he buys it.* There's some truth to this as well. Radio, constrained by narrow, boring formats, ignores the vast majority of music being made.

Even hit songs are served up when the schedule dictates it, not when the listener wants to hear them.

With little more than anecdotal evidence to go by—there's been no shortage of studies on the subject, but they've reached radically different conclusions, and most have obvious flaws—it's unclear how many users see Napster as a substitute for the CD store and how many see it as a substitute for radio. It's clear, though, that both species of listener exist. And for whatever it's worth—not much, probably, given that Napster use isn't widespread enough to make a difference yet—music sales have continued to increase since the program debuted.

Indeed, file trading may be a much bigger threat to the broadcast business than it is to the recording industry. Even as CD sales are going up, radio audiences have been shrinking. With online file trading emerging as a workable alternative to traditional radio, the latter trend may well continue. Napster may not offer the spontaneity and serendipity that's possible on radio—but these days, most radio stations don't either.

There's a third answer that's often ignored: *Because it gives him more options.* In this model, the online music trade is a revolt against packaging, with consumers acquiring individual songs that they want rather than filler-heavy albums that they don't, creating do-it-yourself compilations and sometimes altering the music to comic or otherwise creative effect. (One grassroots mix, splicing the famously profane rapper Eminem's hit "The Real Slim Shady" with Britney Spears' sugary "Oops! I Did It Again," was sufficiently popular to get mentioned in the British tabloid *New Musical Express.*) A unitary product—the prepackaged album—is replaced with a collection of loose parts that listeners may rearrange at will.

Which brings us back to Metallica, a band whose attacks on Napster are gradually mutating into attacks on its own file-swapping fans. "If you don't have enough respect for the fact that I believe this way," drummer Ulrich announced on *The Charlie Rose Show*, "and that I have a right to challenge it...I don't *want* you as a fan." (That isn't exactly an expert approach to public relations, though it's an open question whether it will hurt the band or merely take its place next to Johnny Rotten's spittle in rock's grand tradition of contempt for the audience.) At another point in the interview, Ulrich claimed—rather dubiously—that the key issue for him wasn't the potential loss of money but the loss of control. One could easily reverse that: The digital music bazaar doesn't merely save fans money; it gives them a new measure of control over the product. And though the big labels aren't happy about the prospects of losing money, they've often attacked this audience autonomy as well.

They have constantly battled the best digital music format, the MP3 file, on the grounds that the ease with which it is copied makes it ideal for piracy. What have they pushed instead? A succession of cumbersome copy-protected formats that would make it difficult to transfer music from one player to another, a handicap for anyone who wants to listen to the same song at home, in the office, and in the car. Needless to say, none of those formats have caught on.

Meanwhile, despite the obvious demand Napster represents for a market in individual songs, the big labels have been slow to respond: Not surprisingly, they'd rather charge $18 for 12 songs than $1 for one. (CD singles exist, but only as a misnomer—they're more like old-fashioned EPs.) Several companies, such as CDNow, have offered shoppers the chance to create customized CDs, but each offers only a small catalog of tracks to choose from. With Napster, by contrast, you can find thousands of tracks for free.

Indeed, it's unclear at this point whether it's possible to establish an online version of a singles market, now that Net surfers are getting accustomed to free music. EMusic, which lets you download individual songs for 99 cents and full albums for $8.99, hasn't been able to turn a profit, due in part to its limited catalog but also in part to competition from the file-trading programs. By July, the company had grown sufficiently disillusioned with its original business model that it added a subscription-based service to its wares.

If You Can't Beat 'Em...

This spring, the Evolution Control Committee, an obscure band from Ohio, decided to spread its song "Rocked by Rape" via Napster. It did this by renaming the file to look like rare tracks from popular bands. Other artists soon adopted the practice—dubbed *Napster bombing* in the press—while foes of free music put mislabeled recordings of silence or cacophony into the system. Apparently, the same qualities that make Napster and Gnutella so subversive also make them easy to subvert.

Would it be possible to create a more con-

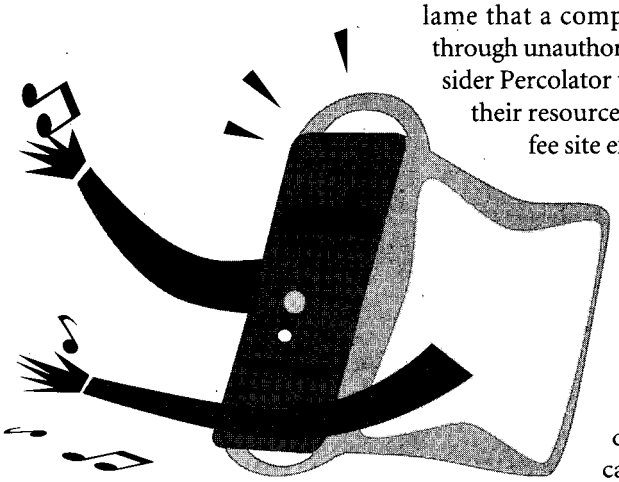
The online music trade is a revolt against packaging. It allows consumers to acquire only the individual songs that they want.

trolled system, one that weeds out such pranks, guarantees file quality, sorts songs by genre, offers taste-based recommendations, or otherwise provides services that listeners might be willing to pay for? Sure. If you want to stop Napster, don't sue it; try to out-compete it. File searchers who don't want to pay anything for music could still use Gnutella or a program like it, with the tradeoff of not always getting what they want—much as home tapers have sacrificed a certain level of quality and convenience in exchange for not paying high CD prices. Those who'd rather not make that sacrifice could use the controlled services, with a portion of their subscription fees going to the artists who make the music they download.

If, that is, subscribers download the music at all. With a stable, legal mechanism for distributing music online, many listeners might prefer to stream music from a vast digital jukebox instead.

Simultaneously, with the Internet and other technologies sharply reducing production and distribution costs, it would become easier for artists to release music without going through a big label, or to extract a better deal from one of those labels, or to team with other musicians to create a cooperative label of their own. Indeed, the most logical source of new material for a subscription-based service may be the artists themselves, not the labels who currently own most of their "rights."

Already, new models along those lines are emerging, as entrepreneurs and nonprofit programmer cabals carry out their experiments in public. In June, I visited angrycoffee.com, one of several Web sites devoted to musical file sharing. Angry Coffee's search engine, dubbed Percolator, uses two imitation-Napster programs (MyNapster and OpenNap) to do its searches. It used to deploy Napster as well, but then the older company told it to stop. ("We think it's lame that a company that built its business through unauthorized distribution would consider Percolator to be an unauthorized use of their resources," a note on the Angry Coffee site explains, "but they're entitled to their opinion.")



You don't need to download any software to use Angry Coffee, which is nice. Even better, it's a lot faster than Napster. Where the older program might take half an hour to do a download, Angry Coffee typically took me just a few minutes. I hit several bugs as well—the site is still in its beta stage, techie-speak for "we're ironing out the kinks"—but I found only one grievous flaw in the system. When I tried to download a Beck rarity called "MTV Makes Me Want to Smoke Crack," I instead received this annoying message: "Remote user is behind a firewall. Download option from such users is yet to be implemented." This problem recurred with alarming frequency.

In the meantime, I was noticing something: Each time I did a search, the list was preceded by a promo for a different band or musician, none of whom I'd heard of. These, I soon gathered, were independent musicians who'd signed agreements with Angry Coffee; the music search was there to draw me in, in hopes that I'd try out one of the bands. I decided to check out a group called Truman Peyote—if nothing else, they had a cool name—and discovered that the band included Angry Coffee's CEO, Adam Powell (no relation to the Adam Powell who occasionally writes for REASON).

I downloaded one of its songs, which turned out to be a competent piece of funk-rock, then explored the site's roster of artists some more. A Northern California act called Grace was described as "alternamericanacore," which I decided must be the 21st-century term for the genre once called "cowpunk." Listening to one of its songs proved otherwise: The term actually denoted a rather impressive imitation of the Brit folk-rocker Richard Thompson. I made a mental note to check whether Grace would be playing any shows in my area anytime soon.

When I called Angry Coffee, CEO Powell answered the phone. After deriding Napster as a dinosaur and announcing his intention to add yet more search programs to Percolator, he claimed that Angry Coffee's featured artists were getting 200 or 300 downloads a day. Its other acts, he added, were getting 50 to 100. Powell hopes the exposure will soon land someone a recording contract. He also assured me that the company's program guru is trying to fix the firewall problem. Right now, it's the debit side of a tradeoff: Because searchers use the site anonymously, they can't reach past those digital barriers.

I wished Powell luck, wondering how long it would take the RIAA to haul his company into court—and knowing that no number of lawsuits could stem the online revolution he represents.

Jesse Walker (jwalker@reason.com) is an associate editor at REASON.

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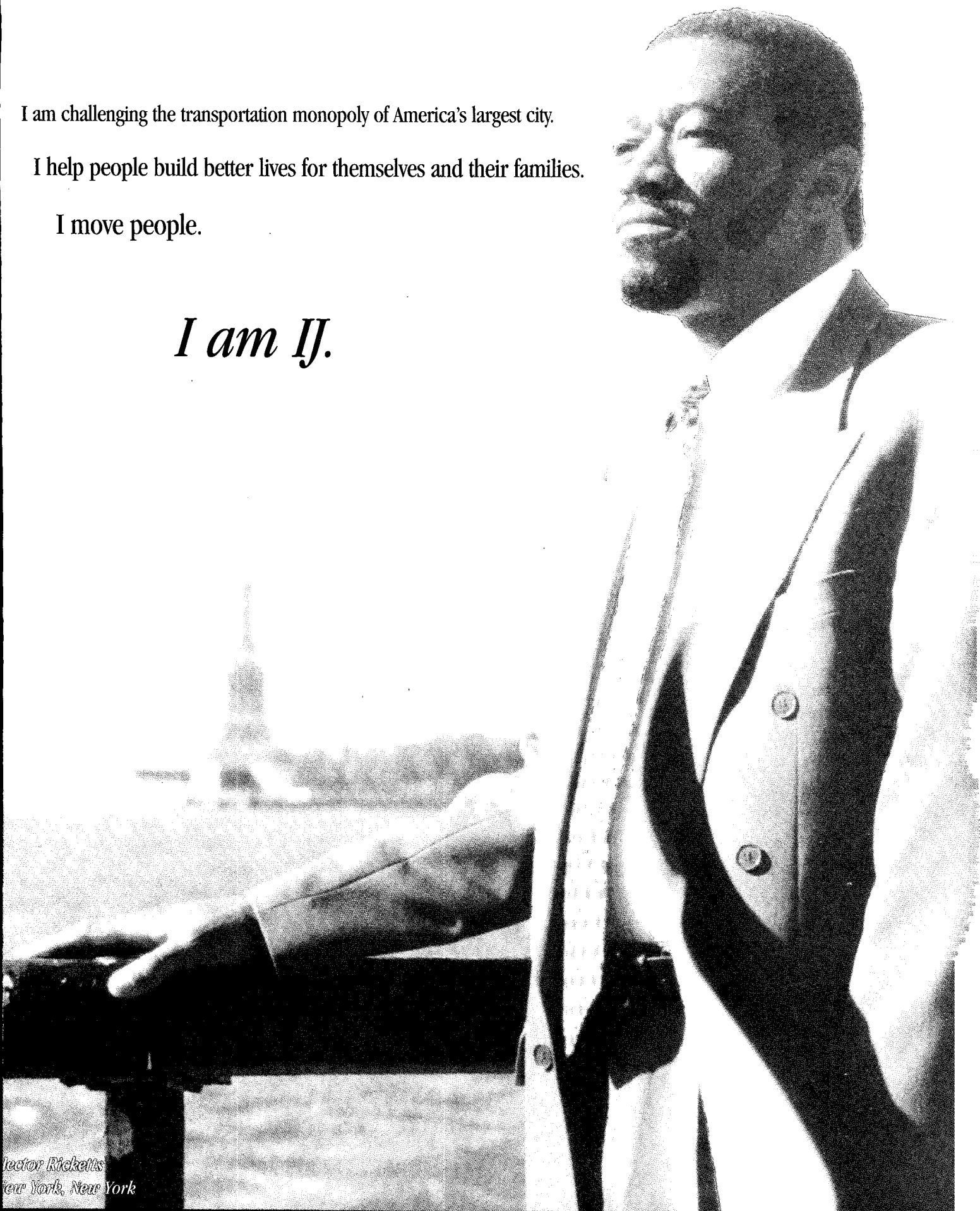

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Do term limits matter? Just ask Congress' quitters.

EXIT INTERVIEWS

DOES ANYONE REMEMBER the mania for term limits, the quaint idea that legislators ought to be citizens who hold political office for relatively short periods of time? A few years back, term limits were hotter than July and widely perceived as a structural cure for Big Government.

Away from Washington, the term-limits movement has been a huge success. Eighteen states have enacted term limits on their legislators; tellingly, all but two of the laws came about via ballot initiatives. This year alone, 380 state legislators will leave office due to term limits.

LUCINDA LEVINE

★ ★

By Michael W. Lynch and Katherine Mangu-Ward

At the national level, however, the story is very different. Twenty-three states limited their congressional delegations, but a 1995 Supreme Court decision declared such laws unconstitutional, reasoning that only the federal government could set additional qualifications for service in Congress. Not surprisingly, Congress couldn't quite muster the votes to do this and term limits ended up being the only item in 1994's Contract with America that the House failed to pass. This summer, even the Republicans, who had once championed the idea, dropped the term-limits plank from their official party platform.

So when it comes to Congress, it's up to individual legislators to limit themselves—and there seems to be less and less pressure on them to do so. Things were very different in the early '90s: Twenty-two freshmen elected to the House in 1994 promised to serve no more than three terms, and a handful elected in 1992 had vowed to serve no more than four terms. The most notable was a nobody from the state of Washington, George R. Nethercutt, who beat then–House Speaker Thomas S. Foley in 1994 by painting him as "a creature of Washington D.C., born and raised in the system."

Surprise: Nethercutt's six years are up and he's found D.C. to be quite an agreeable town. So he's broken his promise. Two other congressmen have turned similar vows into lies. Scott McInnis (R-Colo.) decided a life in D.C. suits him well. Martin T. Meehan (D-Mass.), one of two Democrats who pledged self-control in 1992, has similarly concluded that his district needs his services on a continuing basis. (In declining to be interviewed for this piece, a spokesman says the congressman has "moved on" from the issue.) Interestingly, such backsliders are the exception. To date, 15 of the 18 self-limiters whose clocks have expired have either already honored their pledges or will this November, when seven House members will not stand for re-election.

This summer, REASON Washington Editor Michael W. Lynch and REASON D.C. summer intern Katherine Mangu-Ward visited with five of the seven leavers—Reps. Charles Canady, Helen Chenoweth-Hage, Tom Coburn, Matt Salmon, and Mark Sanford—and talked about their time in Congress, the merits of limited service, and their plans for the future. All display uncommon principle by voluntarily leaving Congress, and for that, they deserve no small measure of respect. At the same time, they make a strong case, often unintentionally, for relief that they are leaving office—and greater discomfort with the colleagues they leave behind.

MR. RELUCTANT
Rep. Charles Canady (R-Fla.)

Charles Canady is a professional politician raised in a political family. At the relatively tender age of 30, he entered the Florida House as a Democrat, switched parties in 1989, and lost a run for the state Senate in 1990.

In a sense, Canady marks the success of term limits. Unlike others who are philosophically committed to term limits, Canady took the pledge to advance his political career. Elected to represent the Sunshine State's 12th District in 1992, Canady pledged to serve just four terms. At the time, there was a term-limit initiative on the Florida ballot for which Canady expressed support. Somebody suggested he pledge to limit himself regardless of the initiative's fate. "So that's what I did," says Canady.

Canady claims term limits haven't affected his voting record or positions. He has worked on lobbying reform and religious liberty issues. In a decidedly less freedom-loving moment, he also supported the Defense of Marriage Act, which was designed to deny gay marriages equal standing to heterosexual unions. He also served as a House impeachment manager and was the leading House opponent to racial preferences in government contracting and hiring.

Though done with Congress, Canady's hardly done with politics: His next stop is a role in Florida Gov. Jeb Bush's administration.

Reason: Did the term-limits pledge make you a different congressman?

Charles Canady: I can't point to anything that I did specifically because I knew I was term-limited. But it does keep things in perspective. It helps you remember that what goes on here inside the Beltway is not all there is of reality.

Reason: What's the most absurd program you've come across in your time in Congress?

Canady: That would probably be a tough call. The problem is that every program has some constituency in favor of it.

Reason: Offend a constituency. Give us a good one.

Canady: I don't want to single out any particular program. I'm sure I could...

Reason: Here's a program you unsuccessfully worked to kill: racial preferences. Can you talk about that?

Canady: My simple view is that it's not right for the government to divide people into categories and groups based on their race and gender. The government should treat people as individuals, and should not define people on the basis of their biological characteristics. I think that is discrimination, and I'm opposed to discrimination.

Reason: A lot of people say they support that position. Newt Gingrich and Dick Armey, for example. Why weren't you able to pass your legislation?

Canady: It's complicated. Ultimately, we failed to move my bill forward because I failed to have a majority of the Judiciary Committee support the bill. That's the simple explanation. I think our leadership had mixed feelings about it.

Reason: What is your largest source of frustration with

Charles Canady: "I have no regrets about the actions...that the House took in impeaching the president. ...He lied under oath in a civil deposition in a civil rights case... that's just unacceptable."

Congress?

Canady: One thing that has frustrated me is the way debates tend to proceed. The proponents of a particular proposal will exaggerate the benefits of that proposal and the opponents of the proposal will exaggerate the problems of the proposal. So you get these extremes in the rhetoric when the truth is really somewhere in between.

Reason: Like the debate over the North American Free Trade Agreement?

Canady: Some people said NAFTA was doomsday for the whole U.S. economy. Others said we would enter the Promised Land if we just pass NAFTA. I opposed NAFTA. I thought that on balance NAFTA would be of some small benefit to the overall U.S. economy. But it was pretty clear to me that it was going to be of significant detriment to the part of the country that I represent. And I couldn't justify having my constituents suffer serious harm for some very, very small overall benefit.

Reason: You were an impeachment manager. You were widely praised for the scholarship you brought to the task. Yet your team blew it in the end. Any regrets?

Canady: I have no regrets about the actions that the House Judiciary Committee took, or that the House took in impeaching the president. The president lied under oath before a federal grand jury. He lied under oath in a civil deposition in a civil rights case. He engaged in other conduct that involved the obstruction of justice. Those are facts.

Under the Constitution he had the duty to make sure that the laws are faithfully executed. That's the role assigned to him by the Constitution. He stepped outside that role and became a lawbreaker. An obstructer of justice. That's just unacceptable.

Reason: Is it really possible to cut government?

Canady: The government we have today is here because there are constituencies that demand these programs. If you ask the average American about government, they are skeptical about government, they don't want government to get out of control. But they don't want to see any significant reduction in the parts of the government that provide benefits to them.

Reason: Do you ever tell your constituents that what they want will hurt them in the long run and that they shouldn't have it?

Canady: Sometimes I'll tell people, "I'm sorry. I can't do it."

Reason: But do you ever say, "I can, but I shouldn't do it"?

Canady: If there are things that people bring to me that they want me to sign onto, I will tell them, "I'm sorry, I am not comfortable doing that." I'll tell people, "I don't know that we can afford this." But I really try not to tell people what is in their interest. I operate on the general assumption that people who come to me are intelligent and they are a better judge of their individual interest than I am. I've got to make a judgment not about their individual interest but about the collective good of the country and the good of my whole constituency.

Reason: What's next for you?

Canady: I'm going back to Florida, where I will serve as general counsel to the governor of Florida.

Reason: Are you going to take your Impeachment Chair with you?

Canady: Oh yeah, that's going with me for sure.

RANGE ROVER
Rep. Helen Chenoweth-Hage (R-Idaho)

If we can't have good government, then we might as well have entertaining government. On that basis alone, Rep. Helen Chenoweth-Hage's six-year tenure in Congress has been a rousing success. When she ran for office in 1994, she held "endangered salmon bakes" to call attention to her opposition to the Endangered Species Act. After she was elected, her Idaho office displayed boxes of "Spotted Owl Helper," according to Michael Barone's *Almanac of American Politics*. Ask her about this today, and she'll hand over an eight-ounce can of "Sockeye Salmon," and point out that if it's endangered we shouldn't be able to purchase it.

Her personal life was good for a few laughs, too: A harsh critic of Bill Clinton's marital misbehavior, Chenoweth eventually had to cop to an affair with a married man after she aired an ad attacking the president.

KATHERINE MANGU-WARD

Chenoweth-Hage is a strong supporter of property rights and the interests of Western ranchers, whom she feels are abused by the bureaucrats administering federal lands. She once sponsored legislation that would have forced federal agents to ask permission from local sheriffs before enforcing federal law. Her strong support of the Second Amendment and of limiting federal power—and her sympathetic comments regarding the militia movement—led a number of mainstream journalists to question her sanity.

Though always controversial, she was re-elected twice to represent Idaho's 1st District, garnering 55 percent of the vote in 1998. She plainly admits she'd like to run for a few more terms, but she's willing to live by her pledge.

Reason: You expressed some regrets about taking the term-limits pledge.

Helen Chenoweth-Hage: I don't regret taking the pledge; I regret that I signed on for only six years. I think that it takes a while to figure out your new job, and this is a very complicated job. Ten to 12 years would probably be a better time.

Helen Chenoweth-Hage: "I don't regret taking the pledge; I regret that I signed on for only six years. I think that it takes a while to figure out your new job, and this is a very complicated job. Ten to 12 years would probably be a better time."

Reason: How do you want people to remember you?

Chenoweth-Hage: That I have been true to real Republican principles. For instance, when we were working on the Contract with America, we passed a bill that said that the federal government may not acquire any more private property. Since then we have moved so far to the left with regards to private property rights that we passed a bill in Congress this year that would allow $3.4 billion to be transferred directly from oil-producing facilities offshore to the secretary of the interior, which he will spend to acquire private property.

It's been people like Tom Coburn, Mark Sanford, and myself who have constantly said, "Let's not forget who we are and why we are here." And that is to protect individual rights, American sovereignty, and private property. If there is not a force of law and justice to protect private property, then we have lost the basis of our freedoms.

Reason: You opposed the deal that re-opened the government in 1995.

Chenoweth-Hage: I did. Got in trouble with the speaker [Newt Gingrich], too. That was the moment the Republicans started moving away from controversial issues. It was at that point in time, in history, that the ball moved from our court to the president's court.

Reason: What is the greatest threat to American liberty?

Chenoweth-Hage: Too much federal and state government. The lack of respect of people working in government for individuals. An idea that certain people who occupy powerful positions in the administration can make better decisions about an individual and their life choices than can that individual.

Ranchers in my district and throughout the West have a whole plethora of government agencies telling them how to raise their cows and how to take care of their land.

Reason: At one time you said that the extreme views of the militia members have to be understood in their context. What are your views on the militia movement?

Chenoweth-Hage: We have developed a sort of thought police back here in Washington, D.C., who try to tell us who we can associate with, what we can say and what we can think and I object to that. I am very uncomfortable with people who act violently and speak violently. It offends my nature, as it does most Americans. But even if we are uncomfortable with a group of people, even if we don't agree with them, as an elected official I have always believed that we should protect their right to freedom of assembly, freedom of speech, their Second Amendment rights.

Reason: One of the things that you were involved in last year was a call for a day of prayer, fasting, and humiliation before God after the Columbine school shootings. Is that a particularly good use of Congress' time?

Chenoweth-Hage: In the Revolutionary War and the Civil War there were 200 such resolutions passed. They are commemorative resolutions that simply remind us that the leaders of the nation would like to call for a day of fasting and reconciliation. This country was founded on the recognition that our freedoms do not come from the state, they come from God, and that the role of the state is to protect life, liberty, and the pursuit of happiness, as stated in the Declaration of Independence. For leaders to recognize those God-given rights and where they come from I think is perfectly appropriate and I will be presenting that resolution again.

Reason: What's next for you?

Chenoweth-Hage: Right now, my plan is to go back to

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Boise and set up business with my daughter doing environmental, natural resources, and contract-consulting work.

HOUSE DOCTOR
Rep. Tom Coburn (R-Okla.)

"Most of them are egomaniacs," says Tom Coburn of his congressional colleagues. "There are not many normal people up here."

Coburn was elected to represent Oklahoma's 2nd District in 1994 and quickly became a player in the annual budget process, working with other conservative members to limit spending. A medical doctor who has maintained his family care and obstetrics practice while in office, he has also made AIDS a top priority, authoring a bill that would require newborns to be tested for HIV if their mothers hadn't been tested for the virus.

Mindful of his declaration that normalcy is in short supply in Washington, it's worth pointing out that Coburn is convinced that there's a national epidemic of venereal disease (gonorrhea comes up quickly and easily even in casual conversation with the congressman). He gives his congressional colleagues and their staff an annual presentation on the subject, providing C-SPAN with some of its racier moments. That's no small accomplishment during the Clinton years.

Coburn doesn't think he'll miss Congress and Washington and has no plans for future political office. Instead, he'll return to his medical practice.

Reason: What prompted you to run for Congress?

Tom Coburn: I was nauseated at what I saw going on. I thought people other than politicians ought to get involved. And I believe in term limits. They set you free from both party and procedural guidelines to do what you think is right.

Reason: Is your voluntary leaving a loss or a gain?

Coburn: It's a gain. Hopefully, more people will see the wisdom of a short period of service up here. Why would you want to come up here to stay? Ask yourself that question. What is it that addicts someone to Washington? Most people who want to do that have a deep-seated insecurity or they wouldn't be up here in the first place.

Reason: Have your priorities changed since you first showed up in D.C.?

Coburn: No. They include a marked decrease in the intrusion in our lives by the federal government at all levels. A restoration of liberty and freedom. I am 52 years old and I can tell you that you have less freedom compared to what I had. You can measure it and define it. There are not more than 160 people in the House who believe in limited government. They may say they believe in it, and that is the difference between a career politician and a term-limited one. The former will say whatever they need to get re-elected, but what you have to do is measure their votes. They'll vote exactly the other way.

Reason: You've been outspoken about trying to get Congress to stick to the 1997 spending caps.

Coburn: We are so far above the budget caps set in 1997. The agreement we have made with the president on controlling spending and decreasing the size of government was a sham. He knew it and our leaders knew it. And they perpetrated a fraud on the American people.

We are just like second-century Rome and Greece. We are declining as a nation because our leadership and our government now use farce to state their cases, and there are too few people who are willing to stand up and challenge that, including the media. Consequently, the very tenets of our liberty are going to be taken away.

Reason: What are some of the perks of power?

Tom Coburn: "We subsidize major, multi-billion-dollar corporations in the country to advance their technology. Your tax dollars go to General Motors, IBM, Exxon-Mobil. It is ludicrous."

Coburn: It's about being called "Congressman." C.S. Lewis had this concept called the "inner circle." Man is constantly trying to get into the inner circle and the reason you want to be on the inner circle is because there is notoriety in it, but also because you can elevate yourself above those that are outside the circle. This is the reason this is such a great job: There are only 435 in this inner circle, out of 270 million people. It is the ultimate inner circle. And then if you are a committee chairman, you are in the next inner circle. And then if you are in leadership, you are in the next inner circle. And then if you are in the conference committee in leadership, you are in the next inner circle. It is elitism, elitism, elitism—chasing something to elevate yourself.

Reason: What is the most absurd program you have come across in your time in Congress?

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Coburn: There's tons. The advanced technology program. We subsidize major, multi-billion-dollar corporations in the country to advance their technology. Your tax dollars go to General Motors, IBM, Exxon-Mobil. It is ludicrous. And there's the sugar subsidy that elevates the price of your sugar.

Reason: Talk about your HIV/AIDS issues.

Coburn: I think history is going to show that this country was a miserable failure when it came to this disease. We have a million people walking around today with HIV. Had we handled it the proper way, the number would be about 50,000 or 60,000. The proper way would have been national testing, partner notification, and accountability. If you have HIV, you have the obligation to never give that to anybody. Just like if you have tuberculosis, you have an obligation to not give that to someone.

Reason: National HIV testing, a registry—actions like that have been taken in Cuba.

Coburn: The reason that such programs have been successful in Cuba is because of accountability. If indeed you do get HIV, you dare not give it to someone else. The spread of this disease would stop tomorrow if everybody that has HIV today didn't give it to anyone else. We need partner-notification and contact-tracing. Just like we've done with gonorrhea for 20 years in this country. We've never violated anybody's civil rights. We said, "You have this, you need to be treated. We need to know your partners so they can get treated and so that they won't give it to anyone."

Reason: What have you learned from your time in Congress?

Coburn: That six years is enough.

ANOTHER KIND OF SALMON
Rep. Matt Salmon (R-Ariz.)

Matt Salmon, the Republican representative from Arizona's 1st District, is a budget hawk who nonetheless supports huge government spending for space, science, and the Stealth Bomber. He's not a man big on second, third, or fourth chances, be they for child molesters or for speakers of the House.

He sponsored "Aimee's Law," also known as the No Second Chances for Murderers, Rapists or Child Molesters Act, which would make states that release anyone convicted of these crimes from prison responsible for prosecuting individuals for any subsequent crimes they commit in other states. He took part in the unsuccessful 1997 coup to oust Speaker Newt Gingrich and he battled Gingrich again in 1998 after Republicans suffered unexpected losses in the November election, going on *Larry King Live* and announcing he had the votes to deny Gingrich the speakership. He considers his part in forcing Gingrich from office to be among his major accomplishments.

Salmon, who served four years in the Arizona Senate before coming to Congress in 1994, is for the moment tired of the legislative life—too many egos to deal with, he says, and not enough opportunities to really make a difference. That said, he openly acknowledges an interest in being governor of the Grand Canyon State. For now, though, he's headed into private consulting, certain he will make use of his fluency in Mandarin Chinese and do something with China.

Matt Salmon: "When you look in the eyes of the appropriators, I don't see a lot of difference between the Democrats and the Republicans. When it comes to pork barrel spending, I don't see a big difference here on Capitol Hill."

Reason: Why did you take the term-limits pledge?

Matt Salmon: Having served in the state legislature, I got a pretty good taste of how the long-termers tended to vote. Professional politicians—I don't care whether they are Republican or Democrat—just have a different view of money. When we talk about tax cuts, most legislators say, "That is going to cost us so much money." And I'm like, "Cost us? What are you talking about? It's their money to begin with."

Reason: What's been your biggest surprise in Congress?

Salmon: The degree of partisanship amazes me. There's not really an ounce worth of difference between what they propose and what we propose, or what we end up voting for. We act like we are doing this big, mean, ugly fight. We try to draw these distinctive lines, but the lines are really blurred. Ninety-five percent of it is theater. When you look in the eyes of the appropriators, I don't see a lot of difference between the Democrats and the Republicans. When it comes to pork barrel spending, I don't see a big difference here on Capitol Hill.

Reason: What have been your major accomplishments?

Salmon: Not going insane. (*Laughs.*) That's one major ac-

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complishment.

Reason: How would you know if you had gone nuts?

Salmon: I don't know. Do you think I'm insane? I think my major accomplishment hasn't been so much what I've been able to accomplish as what I've been able to stop. Recalcitrants like me dug in their feet on some of the budget measures and I think we made a difference. I consider one of my best accomplishments sending Newt Gingrich packing. It was me who stood up after the last election and said, "I have seven votes with me." I went on *Larry King Live* and several other shows and two days later he resigned. After I announced that I had seven votes he started calling around to different people trying to shore up the support, have them come around and drop a ton of ugly on me.

Reason: Why did Gingrich need to go?

Salmon: He had become so gun-shy of taking on the president in any kind of a fight that he'd been neutered—Newt had been neutered. When the government shut down, the biggest mistake we ever made was to open it again. My constituents were thrilled to death to have the government shut down.

Reason: Why do so many of your colleagues want to stay in Congress?

Salmon: There are several reasons. You are kind of a minicelebrity. You go back to your district, and people wave at you, they know who you are, and they treat you like you are something special. You come back here and it's like la-la land. You really are controlling billions upon billions of dollars. You get to go on national TV. People treat you way smarter than you are. They treat you like you are a rock star or something.

Reason: You're a budget hawk, but you like the space station and B-2 bombers. In fact, you want to fund the bombers at a higher level than even the Pentagon does. And you want to publicly fund a space station.

Salmon: The Pentagon has compromised itself time and time again with this administration. When I saw the strategy that they came up with for Kosovo, it became pretty clear to me that they are no longer independent thinkers. The Stealth Bomber technology is one that, if we get into a major conflict, we are going to be thankful that we've got.

The second issue is the space station. My belief is that without a space station, NASA really doesn't have a clear mission. I believe that space exploration is beneficial not only in the advances that it has helped us with on the environmental issues, but also the ancillary benefits, the biomedical advances that we have made, the technical advances.

I also support government spending on research and development. I believe very strongly that government has a major role to play both in biomedical and in technological things if we are going to maintain our edge as the world's superpower.

Reason: Do we really need the government involved in this?

Salmon: The private sector's idea is to compete with each other to make the better widget. But if we are talking about breaking new technologies, I just don't see it happening in the private sector. If we cut the taxes way back and provided major tax incentives for them to be in research and development, that is another route we can go. Absent that, you got to have government.

Reason: Are you going to run for a higher office if Sen. John McCain gives up his seat?

Salmon: No. I'm not running for Senate. I'm not interested in coming back here. The only other job I might run for would be governor of Arizona. I believe that position can really make a difference. But right now, I am ready to go back and make an honest living.

FREE DUCK
Rep. Mark Sanford (R-S.C.)

Republican Mark Sanford ran for Congress in 1994 because he wanted to do something about the deficit, the debt, and Social Security. The GOP establishment wasn't happy—he was a developer, not a longtime pol who'd attended all the right dinners and functions—and they did their best to defeat him in the primary. They sent the likes of Tom DeLay, Dick Cheney, and Jack Kemp to South Carolina's 1st District to campaign against him. "I was like, 'Why are you people here? I don't know who you are,'" recalls Sanford.

Once in office, Sanford was among the early advocates of privatizing at least part of Social Security. He also wants to free Americans to trade with Cuba. And he's famously cheap —a valuable and rare character trait in a politician. Domestically, this led him to oppose pork barrel spending, even in his own district. Internationally, it led him to pay a Cuban family $35 a night to put him up during a 1999 visit rather than stay at a hotel. On a personal level, it leads him to sleep on a futon on his D.C. office floor, rather than rent an apartment. At least he won't have to break a lease when he leaves town.

Reason: Talk about the tradeoffs congressmen must make to be effective and how term limits may affect these tradeoffs.

Mark Sanford: The rarest of all commodities in Washington is independence. Some people told me, "You know, Mark, you are a lame duck before you've even started." I'd respond, "You're wrong. I'm a free duck, and there's a big difference." What you want is the freedom to go down with Tom Coburn last year and offer hundreds of amendments to the agriculture bill just to gum up the works. Now everyone in your own conference hates you. But you don't care, because it's what you think is right.

Reason: Would you have been a different congressman without the limits or would you have done the same things?

Sanford: Very different. You can see why in the agriculture bill: Last time around, Congress restored the mohair and wool subsidies that we had taken out in the Freedom to Farm Act a few years back. That happened because the people who passed the Freedom to Farm Act went native. Term limits force you to maintain that perspective of back home because you are up here for a while and then you are going back there. It's an anchor that keeps you attached to that other perspective.

Reason: You once said that being a congressman wasn't that hard, that it should take six months to grasp the basics. Do you still believe this?

Sanford: In the 9 a.m. Republican conference meeting today, a certain unnamed Californian stands up and says, "This is real simple. It's shirts versus skins. We're shirts, they're skins." It's all the very elementary stuff on trading marbles. Any kid who has a set of marbles in the back yard or Pokémon cards or baseball cards and learns how to trade them knows everything you need to know about Congress.

Reason: Why does the trading always seem to go one way then? People seem to trade more for more, which leads to the growth of government every year. Why don't you ever make a new program contingent on killing an old one?

Mark Sanford: "The rarest of all commodities in Washington is independence. Some people told me, 'You know, Mark, you are a lame duck before you've even started.' I'd respond, 'You're wrong. I'm a free duck, and there's a big difference.'"

Sanford: That is the structural problem of democracy: diffuse costs and concentrated benefits. I'll have 100 visits in a week in the office. Ninety-nine of those visits people will say, "Mark, we really appreciate what you are doing on the deficit and debt and trying to reduce government spending. Keep it up. But we are here to talk to you about this one program and why it is very important." Who's going to take a trip to Washington to save 2 cents on the price of sugar because of the sugar subsidy?

Reason: You talk about concentrated benefits and diffuse costs. But you once testified in favor of anti-dumping action on steel, saying, "Imports now comprise over 30 percent of U.S. consumption. Georgetown Steel, in my district, had been forced to reduce prices substantially to meet import competition, and suffered financial losses." Isn't this a classic example of concentrated costs, which is the flip side of concentrated benefits? These imports may be bad for that company in your district but they're good for consumers.

Sanford: It wasn't an inconsistency. There was a steel bill that had anti-dumping provisions and would have provided a bailout to steel mills. I voted against it because I didn't think a bailout for steel made any sense.

I remember standing on the back of a tractor-trailer at the Georgetown Steel mill to explain that vote. It's a fairly daunting thing to stand up before a couple thousand steel workers and say, "I am going to vote against you and here's why." Basically I said that you've got the executive branch to administer the existing law and you've got the legislative branch to create new laws. What we can't simply do as legislators is create new laws if the executive branch is not adhering to existing laws.

Then I said to the sponsors of the bill, "Look, there is already a law in place that says we will not allow dumping. Because they're not enforcing that law, you guys want to create a new law that also happens to cost a lot of money."

Reason: Is it just impossible to stand up on that tractor-trailer to talk about the gains from trade and comparative advantage?

Sanford: You could if you want tomatoes thrown at you. I was the only guy in the South Carolina delegation to vote to give the president fast track authority on trade legislation in 1998. I walked through the comparative advantage with constituents. If you think about it, you've got a trade deficit with your favorite restaurant that you like to take your wife to on Friday evenings. Or with the movie theater or the bowling alley. And you don't mind having a trade deficit with the bowling alley.

The issue is: Can you afford that trade deficit to the bowling alley? Voters respond, "That's all well and good, but the bottom line is that my ability to go to that restaurant on Friday night rests on my keeping my job. My mortgage payment depends on this job, and if I lose this job, I am not certain that I will be able to find a job paying as well someplace else and I lose my house."

Reason: What's the biggest surprise you've had in Congress?

Sanford: The local will always trump national. Tip O'Neill said that all politics are local. He was exactly right. Whatever is in the best interest of one's chances of getting reelected is what drives the institution. It's selfishness in that "I-have-got-to-stay-up-here-to-do-good, fight-other-fights" way.

These people become your friends and you don't want to disappoint them. Even though I've only been here six years, some of my best friends in life are other members of Congress and I am going to miss them when I go. And if I had been here on the 20-year program, I would be that much more hesitant about disappointing them. Because nobody likes to disappoint anybody.

MICHAEL W. LYNCH

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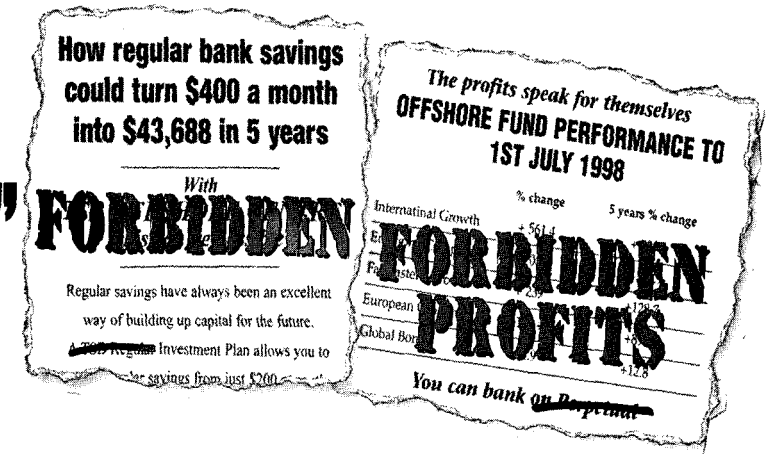
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Rage On

The strange politics of millionaire rock stars

By Brian Doherty

"A good song should make you wanna tap your feet and get with your girl. A *great* song should destroy cops and set fire to the suburbs. I'm only interested in writing great songs."

So says Tom Morello, guitarist for the Los Angeles–based band Rage Against the Machine. He and his bandmates are not simply against cops and the suburbs, of course. They also stand for the Zapatistas and the Shining Path, for freeing Mumia Abu-Jamal and Leonard Peltier, for giving California back to Mexico, and for destroying stores where rich people like themselves shop.

That's pretty strong stuff coming from work-for-hire employees of one of the great cogs in the global capitalist machine, the megaconglomerate Sony, which wholly owns and distributes Rage's music and even is a co-owner of the group's publishing. Since 1992, Rage has sold nearly 7 million records, and it's safe to say that nobody has benefitted more from that commerce than the band's unabashedly capitalist paymaster.

In the world of high-profile popular music, Rage Against the Machine is far from alone in advocating a radical leftism, even one that shades into old-style, let's-nationalize-everything-but-the-music-industry communism. Indeed, Rage has plenty of fellow travelers, most of whom are equally unironic about being fabulously wealthy rock stars.

Comrades in the struggle to overthrow "late capitalism" include Chumbawamba, a collective of British anarchists who hit major pop stardom with their rousing 1997 sing-along drinking anthem "Tubthumping." Chumba (as their fans call the group) declares on its Web site that it wants "to destroy the moral code that says you can only have what you can afford to pay for." And it wants a social order where nothing happens without everyone—*everyone!*—agreeing to it. Folk-rocker Ani DiFranco is best known for refusing to be part of a "corporate" machine, saying that the record business is "dehumanizing and exploitative, not much different from any other big business." Thus, refusing to work on Maggie's Farm no more, she operates her *own* corporate machine, Righteous Babe Records (and pockets far more per record as a result).

Then there's Patti Smith, the over-the-hill punk poetess who once wowed Madison Square Garden audiences with songs about adolescent alienation and all-night sex. Smith includes a 10-minute-plus tribute to Ho Chi Minh and a snappy pop tune against the World Trade Organization on her latest album, *Gung Ho*. The members of the British band Primal Scream, who originally gained fame as drug-addled hedonists, have taken a page from Rage Against the Machine's little red playbook, lately recasting themselves as born-again followers of Noam Chomsky, the tenured MIT professor and favorite "dissident" intellectual of politicized rock bands everywhere.

If pop stars' politics aren't hard left, they can at least be counted on to be firmly liberal, as evidenced by the anti-nuke, pro-green activism of the likes of Jackson Browne, Bonnie Raitt, Sting, and Bono (who has also met with the pope and Bill Clinton to help forge policy on debt forgiveness for the Third World). Oddly, this even holds true for ostensibly redneck bands. When *George* magazine, that self-styled arbiter of what's important in politics and popular culture, devoted a 14-page spread to rock and politics in March, it found notable such glorious rockin' moments as the Allman Brothers' endorsement of Jimmy Carter. The *George*ists suffered no mental strain reconciling support for Jimmy Carter with their declaration that "rock is the music of rebellion and freedom of expression. [It] pushes limits and challenges the established order." Jimmy Carter, the ultimate Ramblin' Man.

To be sure, fighting The Man has its rewards: Rage Against the Machine has landed on the covers of both *Rolling Stone* and *Spin* to promote its capitalist products. There's no social capital to be lost, and much to be gained, by being a socialist.

Despite such occasional freakish and unrespected outliers as that pro-gun and anti-immigrant Motor City Madman, Ted Nugent (whose music is mostly a distant memory as his stage pronouncements against non–English speakers still get negative press attention), and the Ayn Rand–grokking band Rush (which produced a screed about trees who end up getting hacked with axes when they try to enforce equality among themselves—"that song about the trees who join a labor union," as *Village Voice* music editor Chuck Eddy once put it), leftism in one form or another is the backbeat of much modern pop. If a political message is an integral part of any pop band's image or music, it's bound to be leftist. If otherwise nonpolitical bands make public comments, those comments are almost inevitably left-leaning.

This nearly ubiquitous connection is, to put it mildly, rather strange. Pop music—especially that expansive, vague subcategory known as rock—is universally recognized as the soundtrack of rebellion, whether the authority in question is Daddy taking the T-bird away or the Soviet Union. (The former Czechoslovakia's Velvet Revolution was so named in part because

its participants drew inspiration from those poster children of bourgeois decadence, the Velvet Underground.) While rock hugely, hilariously upset right-wing record burners in the '50s and '60s, it was also officially outlawed in all the great Worker's Republics of the same era—indeed, it was seen as the very apotheosis of capitalist hedonism. (But then if only Richard Nixon, that notable Elvis fan, could go to China, then perhaps only Rage Against the Machine, those millionaire communists, could bring Mao back across the Pacific.)

As important, rock and the larger pop music scene are so clearly a function of the wealth, innovation, and leisure time thrown off by capitalism that it should be nothing less than mind-boggling that pop stars themselves mutter incessantly about toppling the very system that pays them so well. But to most rock stars and rock critics, the link between the music and left-wing politics is so natural and so expected that it is simply assumed.

The connection, however, is a matter of attitude and style, not logic. In truth there isn't even any necessary connection among the varied elements of most "progressive" causes: Rage Against the Machine tries to jerry-rig such a link, but it doesn't really argue it so much as assert it. Of course, the band's members assume, someone who doesn't want women raped also hates the rich, wants to return California to the Mexicans, and craves the utter abolition of private property—but there is no logical link between those attitudes.

As impossible as such givens may be to justify intellectually, they are of great importance culturally. By insisting on a connection between a set of logically unconnected propositions, people can forge powerful coalitions that make these fake categories real. For examples of this sort of group building, look no further than the Democratic and Republican parties, neither of which is particularly philosophically consistent—try to find the logical link between socializing medicine and expressing support for free speech, say, or between prayer in school and lowering the capital gains tax.

Or consider the inchoate American gang identified as "Bohemian" in *New York Times* rock critic Ann Powers' new book, *Weird Like Me: My Bohemian America.* Powers casually links rock music with her version of bohemia, that world of young and not-so-young hipsters living and behaving in nontraditional ways. Rock, she writes, "inspires fans to dye their hair green and wear thigh-high leather boots; to defy their parents, skip school, and tell off the boss; or even, sometimes, to take a new turn and change their lives completely." Her bohemia is inexorably linked with progressive politics, not holding down a decent job, being kind to gays and minorities, and all else that's "cool."

Powers fails to recognize that her bohemia is predicated upon a market liberalism that throws off so much wealth that you can live like a Pharaoh just by scavenging what other people throw out—as she and her slacker buddies did in San Francisco in the '80s and early '90s. Her bohemian lifestyle is part of the same system that underwrites free markets, consumerism, and tolerance for all sorts of offensive speech and alternative lifestyles. In other words, the liberty to be bohemian is a glorious result of the very capitalist reality that Powers says a real bohemian must be against.

Pro-market conservatives are the last ones to sell capitalism for what it is: a realm of groovy freedom filled with a dizzying panoply of strange and wonderful and disturbing lifestyles and identities.

In a slightly different vein, well-known rock critic Dave Marsh asserts a necessary connection between the progressive left and rock music. Marsh, a former *Rolling Stone* mainstay, brings it all back home to race and class in *Rock and Rap Confidential*, the monthly newsletter he's edited since 1983. Rock, he says, was the result of breaking down traditional race and class barriers. It represents, Marsh writes, "a chance to communicate across all the gaps in our society—gaps of class, race, region, gender, generation, education, you name it. Used this way rock 'n' roll became not just a 'way out' of impoverished working class or straight-jacketed middle class existence but a method of absolutely transforming yourself, a means of becoming who you'd always dreamed of being...Of such things is freedom constructed."

A certain poetic internal freedom, yes. But about more mundane freedoms—to earn money, say, and spend it how you see fit, or to not have decisions made for you by a nanny state—Marsh is as quiet as audiences at a Canned Heat reunion.

Unlike many leftists, Marsh understands the oppressive potential of government clearly enough to tell me this in an interview: "The difference between a left-progressive-socialist or communist, or whatever the fuck anyone wants to call me, and a liberal is precisely the degree to which you trust the government. And the difference on gun control is precisely the degree to which you trust the government. The First Amendment is first for a reason, and the Second Amendment is second for a reason."

But Marsh can't sensibly reconcile the liberty whose praises he sings with the kind of state necessary to forge the classless egalitarianism that he wants. "I'm trying to find a way to develop a society where people work cooperatively most of the time in order to act on individuality some of the time," he tells me.

But Marsh's conflation of rock as class-and-race mixer with rock as progressive force foists a narrow, partisan political agenda on a more general form of pre-political expression. Certainly such fathers of rock as Chuck Berry, Jerry Lee Lewis, Little Richard, and Elvis Presley shattered race and class taboos: Crossing such lines explains in large part why they were loved and hated by so many.

More than that, though, such figures helped craft the legend of being young and being American as very heaven. Their foot-tapping, ass-shaking rhythms

communicate Dionysian excess, a liberating, often frenzied release from *all* sorts of restraint and control. It is precisely this aspect that cultural conservatives on both the right and the left have always found suspicious about rock 'n' roll. Rock inspires a devil-may-care sense of fun in both individuals and groups, one that doesn't crave any social purpose higher than making the listener feel a particularly energetic and lively brand of good.

Elvis, Chuck Berry, and the rest did this as artists, not proselytizers. If they were the voice of those suffering social injustice and prejudice, they broke free by standing up for a joyous liberty of pleasure and expression, not by campaigning for *campesinos* and a ban on nuclear power. They were about flamboyance and excitement—especially their own highly individualized visions of such things—not dour attempts to institute Chumbawamba's dream of endless town meetings.

It's easy, of course, simply to accuse stinking rich entertainment celebs who talk about overthrowing the system that pays them so well of being hypocrites. Easy, perhaps, and necessary, since of course they are. It's a pose that, however stylish, is just that. But there's something more interesting going on than either conscious or naive hypocrisy.

What rockin' leftists have the hardest time facing up to is rock's reality as a product of capitalism. Chumbawamba claims it is playing the game of "exist[ing] within [the capitalist system] and at the same time trying to find ways to bring the bastard down." The members also admit that, thanks to their deal with a major label, they have "a decent standard of living for the first time in their lives." (These quotes all from the FAQ on their official Web site, www.chumba.com. On the site, they also fend off accusations from young fans who complain that Chumba should never suggest that it's all right to get drunk if you enjoy it—that beer money, after all, could have been spent helping the downtrodden.)

To justify its compromised position, Rage Against the Machine drags Noam Chomsky into the debate, making the twisted analogy that Chomsky wouldn't object to Barnes & Noble—a big, bad company—selling his books, because that's where people buy books. That analogy might explain why Rage would allow its records to be sold at Tower megastores, but not why its members would become employees of and sell ownership of their music to Sony, which makes far more money selling Rage records than Rage itself does.

Leftists desperately want to avoid real discussion of such contradictions. That's because such contradictions suggest that if it's impossible to escape acting like capitalists, maybe there isn't anything wrong with openly being one.

In a curious way, left-leaning rockers and critics are abetted in their cognitive dissonance by right-wingers, who are similarly uncomfortable with the liberating and wild aspects of capitalist culture, especially its willingness to give people whatever they want regardless of the "morality" of the desire. Right-wingers, every bit as much as their left-wing counterparts, are fundamentally troubled by the cultural implications of capitalism.

As Bill Bennett's periodic jeremiads against advertising that exhort consumers "to break the rules" and "to peel off inhibitions" suggest, ostensibly pro-market conservatives are among the last ones to sell capitalism for what it is: a realm of groovy freedom filled with a dizzying and ever-expanding panoply of strange and wonderful and disturbing lifestyles and identities in which even the lousiest jobs can buy enormous amounts of leisure and the coolest movies, music, video games, and whatever else you want.

Both the right and the left are fully invested in a Puritan-work-ethic version of capitalism, no matter how at odds with reality such an approach is. For the right, Max Weber's world of long hours and forgone pleasure is precisely what is good about the system: It creates a society of God-fearing, hard-working, well-behaved individuals. For the left, capitalism not only immiserates all but the top 1 percent of income earners, it crushes difference, breeds racism, and regiments free expression; hence the need for revolution. (Precisely how Ho's Vietnam, say, or Mao's

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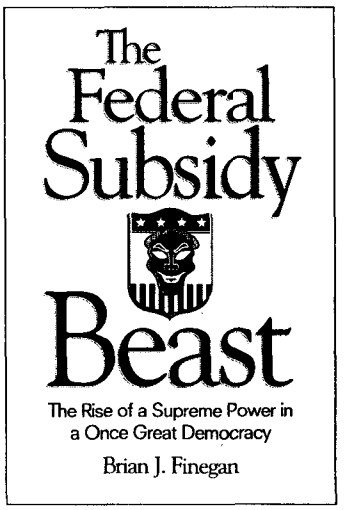

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China, two alternatives invoked by rockers as preferable to contemporary America, provide models for a freer world is left unspecified.)

It's not clear who is listening to Bennett and his ilk's worries that record companies and others are "exploiting the youth rebellion instinct." Nor is it clear that music fans either understand or pay much heed to their favorite performers' anti-capitalist rants. Beyond the question of whether the lyrics are actually intelligible, one great truth of capitalism is that the consumer is king and often, perhaps typically, uses products in unintended ways. (Just ask manufacturers of model airplane glue.)

This is certainly the case with music, often with comical results. During his 1984 re-election run, for instance, Ronald Reagan—dubbed Ronnie Ray-Gun by punk wags—coopted Bruce Springsteen's anguished vet's lament "Born in the U.S.A." as a feel-good campaign anthem. Springsteen and his leftish admirers cried foul and asked Mr. Ray-Gun—*if he could read*—to read the lyrics, for God's sake. The song's lyrics are about a shell-shocked vet with "no place to run, nowhere to go." But who's to say Reagan wasn't right to insist the song was an upper? When I hear those notes and that drumbeat, and the Boss' best arena-stentorian, shout-groan vocals come over the speakers, I feel like I'm hearing the national anthem.

For its part, Rage Against the Machine performs music that eloquently conveys anger and the desire to tear things up; indeed, that inchoate destructive energy may be the real draw for the band's largely adolescent male fan base. But what the lyrics actually convey is another matter. Not only are they frequently impossible to decipher, they are frequently incomprehensible even on paper. Try figuring out the specific call to action embedded in lines such as: "Merge on the networks, slangin' nerve gas/Up jump the boogie then bang, let 'em hang/While the paranoid try to stuff the void/Let's capture this AM mayhem/Undressed, and blessed by the Lord/ The power pendulum swings by the umbilical cord/Shock around the clock from noon til noon/Men grabbing they mics and stuff em into the womb."

Politically engaged pop artists don't like to think about the fact that most people don't get what they're trying to say. Nirvana's Kurt Cobain, arising from a punk rock bohemia that saw intolerant, stupid mainstream dudes and dudettes as the enemy, killed himself at least partially because of this dilemma. Tom Morello of Rage Against the Machine believes he doesn't have to worry about fan misunderstanding (a much hardier type than Cobain, Morello presumably would just picket that Guess? Jeans store with an extra ounce of determination if his fans weren't quite getting his band's message). Morello doesn't see Rage as educating its fans. He says, "It's not at all the case where our audiences are empty glasses that we pour knowledge in...a lot of them are pretty pissed off and have got their own ideas."

Do they ever. If you surf Rage Against the Machine fan Web boards, you find kids shouting things like, "Spring break! Woooo!" On one board, an earnest Rage fan gives a long definition and defense of democratic socialism, while another, not clearly trying to be a wise-ass, replies, "Sweden is run by social democrats—All it really is is super high taxes."

The medium is resolutely not the message when it comes to rock songs and rock style. Aping their favorite performers, fans may dress like Che, sport a stylish, pre-Monica beret, or even get a tattoo of him. But that doesn't mean they're signing on to Guevara's economic plan, which helped sink the Cuban economy during the '60s.

On another popular Rage message board, a fan told of spotting a fellow high school student wearing a Rage T-shirt. The fan engaged the shirt wearer in a discussion of Rage's socialism. But the shirt wearer didn't believe it: How could his rockin' rebels be socialists, since "socialists were fascists who stifle freedom"? The wounded reporter of this exchange noted, "I hope people will actually find out what a shirt stands for before they wear it."

But the other kid knew what he knew. And in the market system that pays Rage so handsomely for its anti-capitalist songs, he's the one who imposes value on the objects that he uses to create his public personality. No matter what Rage's members might think, he knows they stand for freedom when he listens to them.

Brian Doherty (bdoherty@reason.com), an associate editor at REASON, *runs an independent record label called Cherry Smash Records.*

Angry at Daddy

An uncensored Holly Hughes rails against censorship

By Trav S.D.

Seeing Holly Hughes' recent performance piece, *Preaching to the Perverted*, at New York's premier downtown performance space, P.S. 122, last April was like traveling back to 1989. That was when the first shots were fired in the so-called culture wars, a clash among myriad factions in Congress, the National Endowment for the Arts, the media, and the arts community itself. That year, Sen. Jesse Helms (R-N.C.) and then-Sen. Alphonse D'Amato (R-N.Y.) discovered just what Robert Mapplethorpe and Andres Serrano were doing on the taxpayers' dime. In the grand political tradition, they proceeded to turn a case of one penny-ante federal agency's indirect support for controversial art into a national perception of the NEA as some sort of sodomite's Pentagon. By 1990, Helms had introduced and passed a proviso in the year's spending bill that barred the NEA from underwriting art with "obscene" content. The first victims of the new law were dubbed "the NEA Four": Karen Finley, Tim Miller, John Fleck, and Holly Hughes.

Hughes, a New York performance artist, was penalized for having allegedly stuck her hand up her vagina—a gesture that, however mutually rewarding for audience and performer, occurred during a federally funded performance, which the NEA

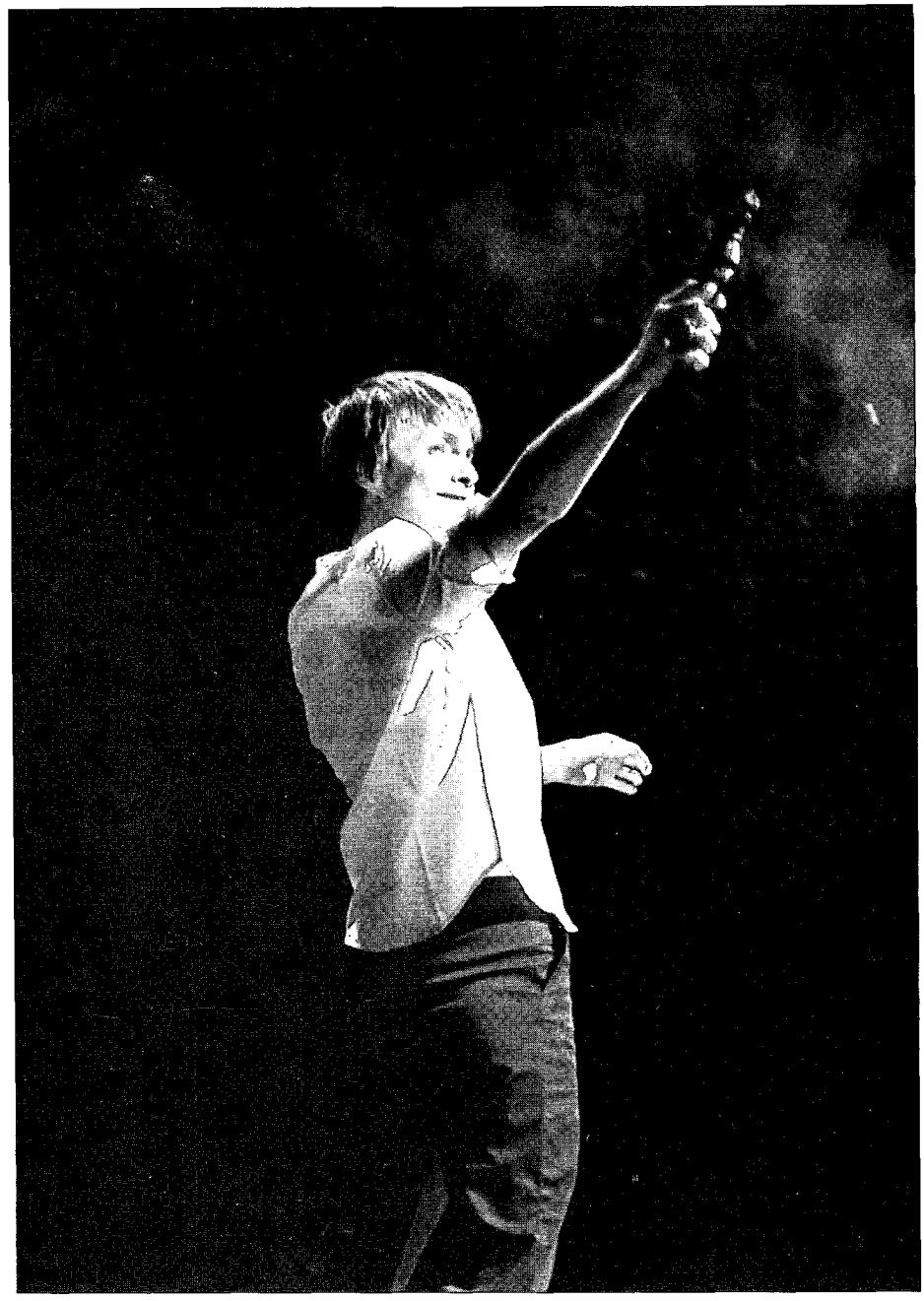
felt violated its obscenity rules. After the agency withdrew its grants, the NEA Four fought the decision in federal court twice, winning both times and eventually receiving their money (a few thousand dollars each) in 1993.

The Clinton administration actually appealed the rulings, and the case went before the Supreme Court in 1998. Hughes and Co. lost. The Court decided that it was indeed constitutional for the NEA to consider "general standards of decency" in awarding grants. It did not rule on whether it is constitutional for the NEA to exist in the first place.

Still licking her wounds from a decade's worth of battles to retrieve her $6,000, Holly Hughes re-emerged, hopping mad, with her latest jeremiad. *Preaching to the Perverted,* which ran for about a month to mostly positive reviews, is an interesting artifact for at least two reasons. First, it raises in crystal-clear relief a number of issues related to public funding of art. Though the culture wars may no longer be front-page news, the underlying issues raised by them—especially dueling definitions of censorship—remain highly relevant in a society that continues to fund culture with local, state, and federal tax dollars.

Second, Hughes' performance lays out in excruciating and exquisite detail the mindset of all too many contemporary artists. Less an artwork than a piece of spoken nonfiction presented with a minimal set and props, *Preaching to the Perverted* lives up to the first half of its labored title. This is a self-contained exercise in *ars gratia politis,* a performance piece by, of, and for Holly Hughes and those people who sympathize with her. It doesn't matter whether Hughes' piece is good or bad, as far as her audience is concerned. Hughes' Hosanna Chorus likes its art political—pretty pictures be damned. In this milieu, mentioning a name like "Antonin Scalia" is a punchline.

This presents a problem for the critic, however. Paraphrasing George Jean Nathan's doctrine of aesthetic jurisprudence, to be fair to Hughes, one must judge her work on its own terms. The difficulty lies in the fact that she so thoroughly privileges content over style, one is forced to judge her on the strength of her ideas and the accuracy of her discourse alone. She gives us no writing, acting, movement, stagecraft. To discuss these elements would be to eviscerate her. To be fair to her, we must confront her on the basis of what she says, as we would do for a politician, a critic, or a philosopher. This is the playing field she has chosen.



DONA ANN McADAMS

Holly Hughes: *Preaching to the Perverted*

Unfortunately, her political thought is illogical, uninformed, inaccurate, superficial, and based on emotion (a terrible basis for a polity). And the flaw at the root of her eagerness to share such thoughts and observations is a colossal, astounding self-involvement, comparable in all ways to that of the asinine busybodies who pilloried her in the first place.

Preaching to the Perverted begins with Hughes throwing a bunch of American flags on the floor while she recites a litany of artists who ran afoul of the political right in the late '80s and early '90s. This sets the stage for the meat of the piece, an

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Art in Its Own Light

The glowing controversy over Thomas Kinkade

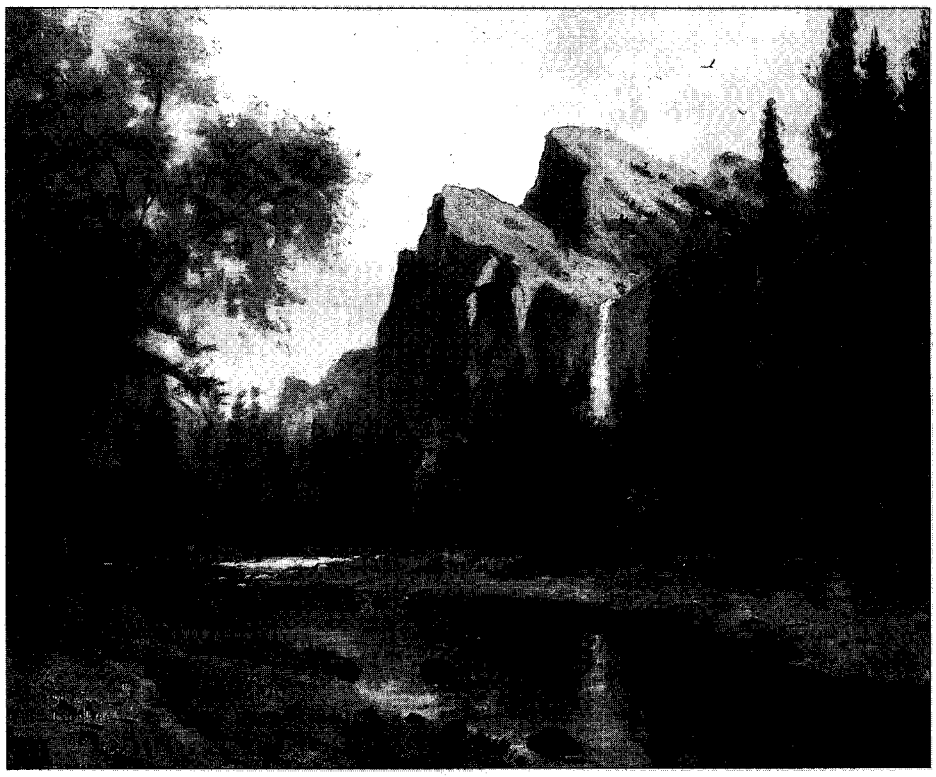
By Charles Paul Freund

Thomas Kinkade, America's self-styled "Painter of Light," is taking his work abroad. Three galleries in Britain will soon be marketing his enormously popular prints and, presumably, his Kinkade mouse pads, Kinkade wallpaper borders, Kinkade plates, Kinkade puzzles, Kinkade teddy bears, and other paraphernalia that bears his name. The controversy he has sparked about the nature of the contemporary art world will probably become another of his exports.

Who is he? Kinkade is a 43-year-old northern Californian whom the *Orlando Sentinel* says is the most collected living artist in history. He is known for landscapes, garden scenes, and cityscapes marked by a characteristic haze, what his publicity material calls the "Kinkade glow." Much of this scenery is given a religious dimension through the titles that Kinkade—a born-again Christian—appends to it: He calls one recent Yosemite landscape *The Mountains Declare His Glory*, a scene of garden steps becomes a *Stairway to Paradise*, etc. The content of his work is both sentimental and undramatic; his fans might call it "tranquil." It looks like a lot of greeting card art, and in fact Kinkade has a deal with Hallmark. You can see some of his work, in the form of birthday cards, in any big drugstore display.

Kinkade is not relying on word of mouth for sales. He has trademarked the "Painter of Light" moniker and through Media Arts Group Inc., the corporation that markets him, has deals with 300 "signature stores" and 4,000 authorized dealers around the country that specialize in his prints (he keeps his originals) and spin-offs. MAGI posted $138 million in sales last year, a 53 percent increase over 1998. A recent MAGI letter to investors treats Kinkade quite openly as a brand name: "Our unique business model incorporates the Thomas Kinkade lifestyle brand, branded products, controlled branded distribution and strategic partnerships with some of the most well known companies in the world. We have the people, knowledge, processes and strategies necessary to create the leading art-based lifestyle brand." Indeed, MAGI goes so far as to claim that its Kinkade lifestyle strategy has "changed the paradigm of art."

An "art-based lifestyle brand," it turns out, goes well beyond painted plates and Christmas decorations. For example, Kinkade now has a deal with La-Z-Boy, which sells furniture sets under his name.



Thomas Kinkade: *The Mountains Declare His Glory*

For some, such branding sits uneasily with Kinkade's pose as a romantic. (On one of his Web sites, he describes a new painting as "the poetic expression of what I felt at that transforming moment of inspiration.") It seems even more at odds with his public religiosity and his description of his works as "silent messengers in the home relaying messages of peace, hope, and joy."

One result is that Kinkade has been reviled as a "damning indictment of our society." The art magazine *Flak* calls him "insidious" and suggests that his public pose is merely a manipulative stratagem. *Flak* notes that Andy Warhol's art assembly line is a precedent but asserts, "We had to wait until Kinkade and MAGI to see the process come to fruition—art,

MEDIA ARTS GROUP INC.

freed from its high-culture moorings, has drifted over the century into the arms of capitalism, so much so that in 1999, the entire concept of an artistic being—personality, style, body of work and consumption—is coldly and very quietly manipulated by corporations."

Flak's doubts about the Kinkade persona are not unreasonable. But so what? From the sheet-wrapped *Bohemiens* of post-revolutionary Paris to the strategically furnished art studios of *fin de siècle* modernists to the boho-dancing abstract expressionists of mid-century, the art world of the past 200 years has relied rather heavily on poses. But *Flak*'s suggestion that Kinkade is a threat to art is as overwrought as MAGI's claim that it has invented a new art paradigm.

Kinkade is neither a paradigm nor a "process come to fruition." He is about subculture, specifically the sizable but relatively underserved Christian subculture.

Kinkade is neither a paradigm nor a "process come to fruition"; he's a niche.

Kinkade is about subculture, specifically the sizable but relatively underserved Christian subculture. Indeed, a reported 80 percent of Kinkade's customers have never before owned an artifact they considered to be art. The Kinkade phenomenon thus joins with such genres as slickly produced religious pop music, specialized cable programming, and popular religious fiction in addressing this subculture's needs. Whether this audience in fact owns art after putting down its money for *The Mountains Declare His Glory* may well be a subject of heated debate for *Flak*'s audience. But it's a moot point for Kinkade's.

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anecdotal, humorous recounting of her experience hearing her case argued before the Supreme Court (which she represents with nine rubber ducks). She picks apart every detail of the experience, including the size of the stairs leading up to the grand edifice (too large: designed specifically to inconvenience *Holly Hughes*); court protocol (they don't allow *Holly Hughes* to talk, take notes, or read a book during the proceedings); and judicial pomp and ceremony (the justices wear robes and sit up high, further alienating *Holly Hughes*).

Along the way, there are digressions reflecting even greater self-involvement. At one point, apropos of nothing, Hughes reveals the fact that she witnessed her father sexually abusing her sister. A traumatic experience no doubt, but the sort of detail that deserves its own (separate) docudrama, unless it is included here solely to ratchet up more sympathy for plaintiff Hughes.

As with so many on both the left and right, she leaves her own views unexamined; they are self-evident and above reproach. The views of others she dismisses out of hand, like a left-wing Archie Bunker. When one of the justices asks the rhetorical question, "What if the NEA-funded art in question had depicted Nazi hate images, such as swastikas?," Hughes comments dryly, "Nazis aren't making much art right now." This provokes resounding laughter from the audience, as if it somehow negated the justice's point, which no one seems to have heard.

The justice (Hughes didn't say which one) was making an analogy so that people who are not offended by the likes of *Piss Christ* can understand why others might be. The inability of Hughes and her compeers to put themselves into someone else's shoes is what got them into hot water in the first place. Like it or not, they are a special interest, just like tobacco farmers and defense contractors. We are all expected to tolerate their art, however, as if it is somehow different from federally funded lung cancer and $1,000 toilet seats.

Hughes also commits the (very popular) error of conflating vastly different issues into a single category for the purpose of making a case. She lumps together the proposed flag burning amendment, the 1990 obscenity arrest of the band 2 Live Crew in Florida, and the congressional restrictions on NEA funding. We might term this convenient category "Mean Old White Guys Out to Circumscribe Self-Expression by Any Means Necessary." The problem is, the differences between the methods make all the difference in the world. The flag burning amendment would amount to a partial repeal of the First Amendment. What happened to 2 Live Crew was a local, and very real, injustice. But the withdrawal of NEA funding is hardly analogous to those censorious examples, for as even Helms could realize, artists remain free to make their art "on their own time, on their own dime."

The NEA has no power to prevent Holly Hughes from presenting her work. Thousands upon thousands of non–NEA-supported artists make thousands upon thousands of non–NEA-supported pieces of art every day. Hughes has now joined their ranks. How has she been censored? Yet she complains in her piece that flag burning, cross burning, and campaign contributions have all been found to be protected speech under the First Amendment, but her performance art has not. She misses the fundamental point that *federally funded* flag burning, cross burning, and campaign contributions are all verboten under the current NEA restrictions. This is the point that that Supreme Court justice tried to make about Nazi art, but Hughes wasn't listening. Equating "not funding" with "censoring" is a fallacy akin to saying welfare reform forcibly prevents people from going to the grocery store. Indeed, Hughes claims she is being censored by the federal government...in a

Only a masochist would actually want to make herself the indentured servant of government in exchange for $6,000. But maybe this is what Hughes means by "perverted."

performance piece that has not been censored by the federal government.

Perhaps the moment that most tellingly reveals the level of sophistication of Hughes' political thought (and that of her audience) is when this 50-ish woman kicks a cardboard box supposed to represent Jesse Helms and shouts, "Fuckin' asshole!" More than anything, her work, and work like it, is a sort of case study in arrested development. She herself admits she has a hang-up about "Daddy," surely stemming from the above-mentioned incident of abuse.

She refers to "being punished for being bad" and "having her allowance taken away." Her problem with Daddy even extends to Bill Clinton, whom she attacks mercilessly for his part in defunding her, much to the hilarious confusion and embarrassment of her audience of knee-jerk Democrats. (Despite the fact that he has betrayed his and their professed principles time and again, criticism of him does not compute, testament to the man's mesmerism.)

Hughes seems to be running from the obvious solution: Remove yourself from under Daddy's thumb. The Great White Father has always been an asshole. Helms and D'Amato are boors, and the people who run government agencies are bureaucrats. This has always been the case and always will be the case. This is why, for the First Amendment to function, there must be a separation of Culture and State. Only a masochist would actually want to make herself the indentured servant of government in exchange for $6,000. But maybe this is what she means by "perverted." ◆

Trav S.D. (traviss@nyhistory.org) is a critic, playwright, and performer, and manager of Mountebanks, New York's retro-garde theater company (www.el.net/Mountebanks).

Drugs of Choice

By Jacob Sullum

Addiction Is a Choice, by Jeffrey A. Schaler, Chicago: Open Court, 179 pages, $42.95/$19.95 paper

How to Stop Time: Heroin From A to Z, by Ann Marlowe, New York: Basic Books, 297 pages, $24.00

Jeffrey Schaler and Ann Marlowe probably would not get along very well. He is an addiction psychologist whose unabashed libertarianism clashes with the leftish sensibilities of other drug policy reformers. She is a rock critic who writes for *The Village Voice* and views capitalism with ambivalence. He seems to spend a lot of time online, vigorously defending his iconoclastic views against all comers. She hangs out all night in hip, grungy New York clubs. He likes "a glass or two of wine or scotch, and occasionally more than two." She doesn't much care for alcohol; until about five years ago, her drug of choice was heroin. His writing style is relentlessly logical and straightforward, while hers is impressionistic and elliptical.

Despite the stark differences in their perspectives and approaches, Schaler's polemic, *Addiction Is a Choice*, and Marlowe's memoir, *How to Stop Time: Heroin From A to Z*, come to strikingly similar conclusions about the nature of addiction, a term that is hauled out with alarming frequency these days to explain away irresponsibility and justify paternalism. "I deny that there is any such thing as 'addiction,' in the sense of a deliberate and conscious course of action which the person literally cannot stop doing," writes Schaler, who deals with drug problems as a psychotherapist, college instructor, writer, and expert witness. "People are responsible for their deliberate and conscious behavior." Marlowe, a Harvard graduate who started snorting heroin in her early 30s and continued for seven years, using it almost every day for months at a time, is no less adamant about individual responsibility. "Not for a minute can I subscribe to the popular view...of addiction as uncontrollable need," she writes. "Still less can I take addiction as an excuse for bad behavior."

Much of what Schaler and Marlowe have to say about addiction will be familiar to readers of theorists such as Thomas Szasz and Stanton Peele. All see addiction as a pattern of behavior that can be understood only in the context of a person's values, circumstances, and choices. In this view, addiction is about much more than pharmacology.

Indeed, for Schaler, "addictions are indispensable." Harking back to the original meaning of the term, he defines *addiction* as "a fondness for, or orientation toward, some thing or activity, because it has meaning, because it is considered valuable or even sacred." Addiction, then, is not inherently good or bad. "Addictions—and only addictions—can open us up to all that makes life rich and fulfilling," Schaler writes. "Yet addictions can also have appalling consequences. The moral is clear: Choose your addictions carefully!...Addictions we approve of are called 'virtues.' Addictions we disapprove of are called 'vices.'"

Schaler's approach sweeps away a fog of pseudoscientific obfuscation and reveals the moral issues at the heart of this subject. "Addiction is the expression of a person's values," he writes. "Therefore, whenever we talk or write about addiction we are dealing with an ethical issue, not a medical one. Addiction is not a disease, nor is addiction a public health problem. Addiction is a choice."

Recognizing that the average reader will have a hard time accepting that assertion, Schaler cites an impressive body of research that contradicts popular notions about drug habits. He shows that experimenting with reputedly irresistible drugs such as heroin and cocaine generally does not lead to addiction and that addicts commonly moderate or stop their drug use on their own. He debunks studies that are said to demonstrate the overwhelming power of drugs and systematically attacks the disease model of habitual intoxication promoted by Alcoholics Anonymous.

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The Art of the Deal

J.S.G. Boggs draws money for a living. What's his exchange rate?

By Jesse Walker

Artist J.S.G. Boggs is famous for drawing intricate but slightly skewed versions of the national currency, asking businesses to accept one of these bills in lieu of ordinary dollars, then asking for the correct change. Anyone willing to take this leap of faith and accept the bill will soon find collectors offering him thousands of Treasury-approved dollars for it. In a sense, Boggs is issuing his own currency, backed by the full faith and credit of the fickle art market. If it sounds a bit like a confidence game, that may be because it's public confidence that gives money value in the first place.

Critics and journalists love Boggs' work, but lawmen are sometimes less tolerant. In 1986, the British government charged him with counterfeiting, even though he has never represented his work as "real" money. He won that case, but that hasn't kept other police forces from harassing him. Late in 1992, the U.S. Secret Service raided his workshop, confiscating drawings, receipts, even press clippings. Eight years later, they've neither filed charges against the artist nor returned his property.

More recently, Boggs has designed an electronic image—or rather, a rapidly shifting flux of images—for an encrypted online currency to be unveiled later this year by Blue Spike Inc. And the University of Chicago Press has published an excellent book about the man, his art, and the issues his art raises: *Boggs: A Comedy of Values*, by Lawrence Weschler.

Boggs, 45, divides his time between New York City and St. Petersburg, Florida, where I reached him by telephone.

Q: What's the status of your conflict with the Secret Service?

A: They confiscated over 1,300 items of my property. But when I went to collect them, there were only a couple of hundred items in the box—and they wouldn't even allow me to inventory them. So I'm going to have to go back to court.

Q: Isn't there a sense in which fights like that magnify the point your art is making?

A: It magnifies several points. One is that art in this country is not properly understood, respected, or valued. Another is the discrepancy between what we represent as our beliefs and what we actually practice. In this country, we're supposed to have due process, and we're supposed to have respect for private property.

Q: If I drew a dollar bill and signed your name to it, would I be a forger or a counterfeiter?

A: A forger. I don't make money; I make works of fine art.

Q: Have you ever drawn a currency that was subsequently devalued?

A: Yes.

Q: Did the price of your drawing drop after the devaluation?

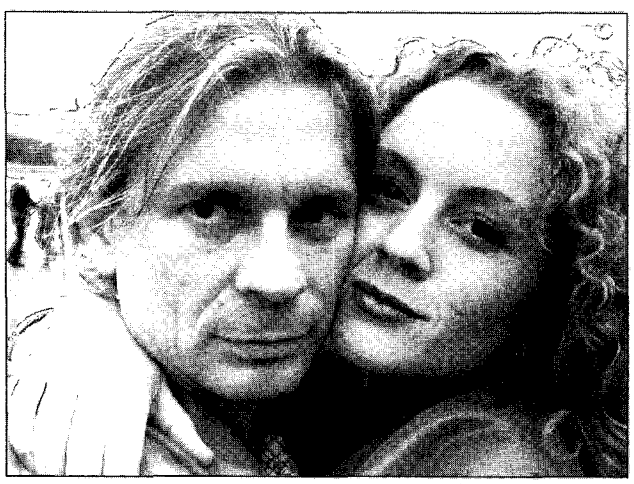
A: No—my work has a nasty tendency to keep appreciating.

Q: What's the oddest thing you've ever bought with a Boggs bill?

A: I've bought everything with Boggs bills. Hot dogs, watches, airplane tickets, rent, clothing, jewelry—anything.

Q: Have you ever drawn a campaign contribution?

A: No, but I've drawn a charitable contribution. I drew a $1 bill, which I gave to the New York Dance Company as a donation valued at $1. They put it up for auction and sold it for $5,000. The person who bought it sold it for $10,000. Last I heard, the current owner was offered $25,000 but declined to accept it.



J.S.G. BOGGS

J.S.G. Boggs and his money (top).

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"The idea that addiction is a disease," he declares, "is the greatest medical hoax since the idea that masturbation would make you go blind."

In taking on the prevailing wisdom, Schaler shows a sharp eye for contradictions, non sequiturs, and unfalsifiable claims. "Addiction is a 'disease' to be 'treated,' yet 'treatment' consists of talking sessions aimed at changing the addict's beliefs and motives," he observes. "Ironically, the fact that addiction treatment does not work helps to convince people in the addiction treatment field that addiction is a disease. What else could account for the tenacity with which addicts cling to their addictions? Could it be that people sometimes freely choose to do foolish and self-destructive things? Inconceivable! It must be a disease that makes them do it."

Marlowe is not nearly as wary of talking about addiction as if it were a medical condition. Growing up in New Jersey, she saw her father, a research chemist and patent attorney, succumb to Parkinson's disease, an experience that colors much of her memoir. At one point she tentatively likens her habit, "with its intimations of loss of bodily control," to her father's condition (though she admits, "I always could, and finally did, simply walk away from my illness"). Conflating the flu-like symptoms of withdrawal with addiction itself, she calls heroin use a "sickness," a "disease," an "illness." She does not pause to reflect on the implications of such language—surprising for someone who otherwise seems keenly aware of loaded terminology, whose book is organized as a faux dictionary, with each section tied to a resonant word. Still, she clearly does not believe that addiction is something that happens to you. "My addiction, such as it was, was chosen," she writes. "Getting a habit isn't an accident, or the result of the 'power of the drug'; it's what you were after."

Marlowe rejects the idea of addiction as an impairment of will. "Taking heroin never struck me as showing a lack of willpower," she writes. "After all, what is a habit but self-discipline? Most people don't have the capacity for it." Here she echoes Schaler, who suggests that "heavy drinking and drug use are characterized by strong will. The more single-mindedly self-destructive the drinker or other drug user is, the more indicative their behavior is of a strong will, even an iron will."

Marlowe warns that the "fetishization of dope" fostered by anti-drug propaganda only makes heroin more attractive. "The more heroin is hyped as ultimately powerful and irresistible," she says, "the more people are going to addict themselves to it." Schaler makes a related point when he observes that believing a drug cannot be used moderately, the way that Alcoholics Anonymous encourages heavy drinkers to think about alcohol, can be a self-fulfilling prophecy.

Like Schaler, Marlowe takes a dim view of A.A. and its progeny. "The twelve step programs encourage this nonsense [the belief that addiction is uncontrollable] with their obtuseness about psychoanalytic thought," she writes. "They'd rather have someone stand up and testify that eight years after his last heroin he still struggles every day against the temptation to do it again—a ridiculous notion—than send him to learn what he really is fascinated with."

Marlowe's preference for psychotherapy over A.A.-style ritual reflects a conviction, displayed throughout her memoir, that drug abuse is a sign of other problems that need to be dealt with. Schaler would certainly agree. He describes a 16-year-old girl whose desperate parents brought her to him because she was using LSD and marijuana regularly. "As usual," he writes, "I kept the emphasis off drugs and asked her about the problems in her life." After a few months of therapy, the girl became "completely abstinent, except for a few very moderate intakes of alcoholic beverages."

Schaler does not tell us what this girl's underlying problems were. For Marlowe, who says she has not been tempted to use heroin again since she gave it up in 1995, the drug was a way of "stopping time," of pushing away the consciousness of mortality that afflicts all of us but was especially acute in her case, partly because of her father's long struggle with Parkinson's. "If I had to offer up a one sentence definition of addiction," she writes, "I'd call it a form of mourning for the irrecoverable glories of the first time. This means that addiction is essentially nostalgic, which ought to tarnish the luster of nostalgia as much as that of addiction....That drive to return to the past isn't an innocent one. It's about stopping your passage to the future, it's a symptom of fear of death, and the love of predictable experience. And the love of predictable experience, not the drug itself, is the major damage done to heroin users. Not getting on with your life is much more likely than going to the

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emergency room, and much harder to discern from the inside."

During her years of heroin use, Marlowe made a nice living from a "consulting business" (presumably financial consulting, since she worked at an investment bank after college). Although her habit apparently did not affect the business, her writing career stalled. Her chief regret about heroin is the time it wasted and the experiences it blocked. "After I quit," she says, "it gradually came to me that the messy stuff I'd been screening out with dope—the nitty-gritty of having a relationship, constructing friendships, getting along with acquaintances, meeting new people—the stuff that hadn't seemed worth the trouble, the stuff that had to be controlled so I could focus on the important matters, was in fact the only material life presents."

Schaler, too, sees missed opportunities as heroin's main danger: "I oppose the use of heroin for the same reason I oppose the use of Prozac: I think relying on these is an existential cop-out—a way of avoiding coping with life." The deliberately provocative comparison with Prozac helps clarify the moral and practical issues raised by chemically assisted living. People who like Prozac would probably say that it helps them get on with their lives by relieving anxiety and chasing away the blues. But Schaler argues that using drugs this way is counterproductive because it eliminates the discomfort that spurs people to make the changes that would ultimately lead to better, more satisfying lives. Surely there is truth to both positions; the trick is recognizing which more accurately describes a particular person's situation.

The answer to that question does not hinge on the drug's legal status. Americans like to pretend that pharmaceuticals are morally unproblematic, because they are approved by the government and prescribed by doctors. Conversely, they like to pretend that illegal drugs, unsanctioned by authority, are inherently immoral. This pretense breaks down when similar substances—say, amphetamine and Ritalin—are used for different purposes, or when different substances—say, heroin and Prozac—are used for similar purposes. Then we are forced to think about what makes one kind of drug use life-enhancing and

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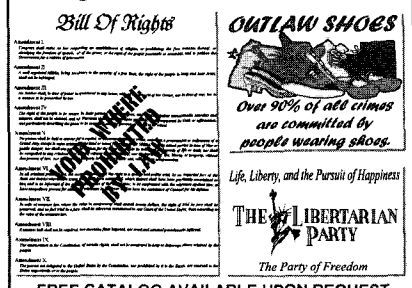
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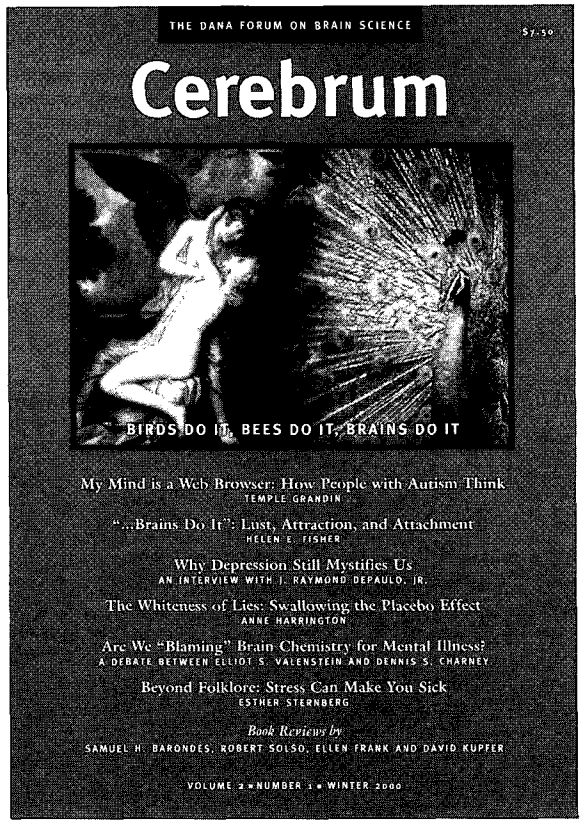
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another kind self-destructive.

To talk about the reasons why people use drugs—and, especially, to distinguish between good and bad reasons—is risky, as Marlowe discovered in 1994, when she first wrote about her heroin habit. "Doing heroin isn't as scandalous as writing about it," she notes. After her account appeared in *The Village Voice*, "I got lots of nasty letters that all agreed on one thing: because I emerged from years of heroin use without noticeable health, career or financial effects, I wasn't qualified to write about dope. I didn't really have the experience, because the sign of really having the experience is ruining your life. This is a circular argument of course—'we will only trust accounts of dope use that end in ruin, because dope use always ends in ruin.'"

People can get into trouble by trying to substitute easy sources of pleasure for more worthwhile activities, whether they're buying heroin or fancy clothes.

Marlowe rejects the charge that writing about heroin glamorizes it, making the writer responsible for anyone who might be inspired by the account to try the drug or return to it. "If I wrote an article about how wonderful a time I had surfing," she says, "I doubt readers would blame me for any injuries they received trying to duplicate my experience. But accounts of heroin use (and sex), like the real thing, are supposed to be irresistible, powerful drugs in their own right."

Although her criticism of the conventional take on heroin suggests that Marlowe is skeptical of the war on drugs, she is not nearly as explicit in condemning it as Schaler, who declares, "It is no more the business of the government what chemical substances you put into your body than it is the government's business where or in what manner you practice your religion." And while her memoir is filled with intriguing ideas, she occasionally goes astray, especially when she deals with economics. She claims, for example, that "copping reveals the aggressivity behind buying that capitalism usually manages to cloak." Because "heroin is a commodity and inspires no affection except for its use value...and because the commerce of heroin is deeply illegal, the aggression beneath all purchasing seeps out."

But surely it's the drug's illegality, rather than its status as a commodity, that explains the market's undercurrent of violence. When I buy salt or sugar, I never worry that the grocer will refuse to hand over the goods after I pay, or that he will try to substitute some other white substance, and he never worries that I might be an undercover cop. Later, Marlowe more accurately describes buying as "a way of negotiating the competition for scarce goods without physical violence." Buying can do that because the transaction is voluntary, meaning that both parties see themselves as benefitting from it.

Marlowe's confusion seems to reflect her uneasiness with earning and spending. "Stereotypical wisdom has it that when people get addicted to dope, they become greedy and money-centered," she writes. "But it's really the other way around: only those with an inclination to greed and a fascination with money become serious about dope. Heroin use is a disease of those who are naturally most suited to capitalist society—bossy wired hustling obsessive-compulsives—but, perhaps, are ashamed of that. We decide we would rather be cool, but we gravitate to those aspects of this aesthetic that can be purchased because this is an action we understand....While dope is in some ways the ultimate hipster buy, when all is said and done it's still a purchase and the user is a consumer. Centering your life around copping is not so different from centering your life around shopping, or making deals. Same activity, different aesthetic."

You can interpret this as a swipe at consumerism or as an attempt to normalize heroin use. Either way, the important point is that people can get into trouble by trying to substitute easy sources of pleasure for more worthwhile activities, whether they're buying heroin or fancy clothes. Both of these books help us see that just about any harmless diversion can become a dangerous distraction—a realization that makes the risk of addiction seem more immediate but also puts it into perspective. The next step is to recognize the difference between good and bad habits, an ongoing task that engages anyone who tries to find meaning in a world of choices and temptations.

Senior Editor Jacob Sullum (jsullum@reason.com) is writing a book about the morality of drug use.

Impractical Equality

By Richard A. Epstein

Sovereign Virtue: The Theory and Practice of Equality, by Ronald Dworkin, Cambridge: Harvard University Press, 505 pages, $35.00

Throughout his long and distinguished career as an academic lawyer and political philosopher, Ronald Dworkin has been obsessed with a single theme: to show how an—or, more precisely, *his*—egalitarian vision of the world can shape the character of our legal, political, social, and market institutions. In *Sovereign Equality*, Dworkin brings together essays that he has written on this subject over the past 20 years and wages a two-front war to persuade the reader of his grand idea.

The first half is intended to show that the rigorous philosophical foundations of his concept of equality of resources is superior to any rival conception of liberty. More ambitiously perhaps, he argues that his concept is powerful enough to reduce liberty to a subsidiary principle whose chief

value is not as a stand-alone ideal, but as an adjunct or component to the complete theory of equality. The second half of the book, much of which consists of reviews originally written for *The New York Review of Books*, is devoted to applying his egalitarian theories to pressing social issues: campaign finance, welfare reform, universal health care, unemployment insurance, genetic medicine, and cloning.

Dworkin's influence on current political debate is substantial, at least if the work of any avowed public intellectual ever has any influence on public affairs. He is by any standards an elegant writer and an ingenious debater. His standard ploy starts by expressing indignation about the deplorable state of American practice in some chosen area. For example, campaign financing today is a "disgrace," and the 1996 Welfare Reform Act was "a plain defeat for justice." These broad, largely unsubstantiated, apocalyptic judgments are then used as a lever to force a reconsideration of current practice in light of Dworkin's grand theory, which promises to remedy the problem at hand. His is an ambitious agenda, but ultimately one that will persuade only those diehards who embrace Dworkin's egalitarianism from the get-go.

Why? At the most general level, Dworkin leaves his reader with a sense of urgent uneasiness. He is almost too smooth, too slick, and too elusive for his own good. He never immerses himself in the grubby particulars of any institution, case, or practice. His universe of discourse is largely self-contained and conducted only at the highest level of abstraction. Once on Mt. Olympus, he conducts probing dialogues and sharp exchanges, but only with himself. His mini-Platonic dialogues typically state a position, then give—sometimes in quotation marks no less—the imagined reply of some overmatched adversary, which is duly demolished with a clever example or some newfound distinction on the nature of preferences, the multiple forms of luck, or whatever.

His explicit reliance on, or confrontation with, other writers is, with a couple of notable exceptions, virtually nonexistent. He will from time to time address by name (but in passing) writers on the left, such as Amartya Sen or G.A. Cohen, but those of us with conservative, libertarian, or vaguely market-oriented positions are nameless placeholders whom Dworkin never deems worth engaging.

In *Sovereign Virtue*, Dworkin's opening gambit reads, "No government is legitimate that does not show equal concern for the fate of all those citizens over whom it claims dominion and from whom it claims allegiance." The categorical force of his declaration is surely incorrect: Let there be a government formed with the universal consent of the governed that seeks other ambitions—the maximum liberty of action for all individuals consistent with respect for the like liberties of others, for example—and Dworkin might be able to argue with some conviction that this vision is inferior to his own model of equal concern and respect. But it takes a lot more to denounce a rival conception as "illegiti-

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mate" when it may just be wrong.

Dworkin's way of putting things can be quite chilling. Some of us—me, for example—do not want the government to be concerned with, or for, their fate, and would prefer, in large portions of their lives, to be left alone to succeed or fail as they may by their own devices. The "concerned" government quickly becomes a meddlesome government, whose cumbersome political processes could easily lead it to do more bad than good. (Go ask those denied access to marijuana if you don't believe me.) An insistence on the limits of government is not a self-interested plea of the privileged or the well-to-do. It is a political ideal that urges the government to attend certain public functions—the maintenance of order and the provision of infrastructure—while allowing people to organize their private lives, free from external interference and without external subsidy, as they see fit.

But the last portion of Dworkin's fundamental axiom places that private space in peril. A government that exercises "dominion" could come, insensibly, to exercise ownership over individuals, not sovereignty over citizens. A government that demands allegiance claims loyalty and fealty, but may not supply the level of protection and respect that renders it worthy of loyalty from its citizens. As Dworkin states it, equal concern and respect sounds more like a veiled threat than a cherished ideal.

But let us assume for the moment that Dworkin, not Locke, sets out the correct, if ambitious, agenda for government. How then does it deliver its "sovereign virtue" of equality? Here, rhetorically, we should expect Dworkin to begin with a confident assertion of the dominant place of equality in the political and legal firmament. But instead he first takes us through an exhaustive philosophical exposé of the permutations of equality that he does *not* believe can ground the just political order. In typical fashion, he sets out an opposition between two forms of equality. But rather than speaking of the familiar collision between equality of opportunity and of results, he poses the choice as between equality of welfare and of resources—both of which are actually variations of the equality of results.

For its part, the equality of welfare requires all material resources to be distributed across individuals within the community such that each person derives the identical utility from his bundle of resources as any other citizen. Dworkin rightly understands that this principle imposes impossible administrative burdens on the state, that it encourages certain individuals to develop champagne tastes in order to garner a larger fraction of resources from their more ascetic fellows, and that it requires hopeless hypothetical judgments about how people would value the resources they might command, or the lives they might lead, if they had personalities and temperaments other than their own.

That said, Dworkin does commit himself strongly to the view that equality in the distribution of material resources is sufficiently objective and workable to count as an appropriate social goal. But here he inadvertently accentuates the practical difficulties in executing this system by inviting us to consider how resources would be divided among members of a community who all at once were stranded on some desert island and were forced to make a fair distribution of its virgin resources among themselves. As a general matter, it is a mistake to reason back from extreme situations to routine practices, and Dworkin's discussion only confirms the dangers of eschewing the real-world supermarket and stock exchange for the imagined desert island.

First off, Dworkin's desert island example completely elides the first question that his theory must address: What are the appropriate boundaries of the community in which all individuals owe each other the duty of equal concern and respect? Presumably, the ideal of community gains traction because we can identify those individuals who fall outside that community and who are therefore owed only a duty of nonaggression, but not a duty of support, or at least not of equal support. If that difference does apply, then the creation of community boundaries becomes critical to separate insiders from outsiders.

Dworkin's inattention to the boundary question thus exposes him to the following simple retort: Why are not all human beings part of the same human community, such that the level of redistribution that he champions on a domestic scale becomes obligatory on an international scale—so that those who receive support from others locally in turn could be required to surrender wealth to their less fortunate brethren globally? If Dworkin's answer is that we should certainly consider

SCOTT STANTIS

the use of foreign aid on a charitable basis to undeveloped nations, the question becomes, Why should individuals at home with lesser needs have stronger rights?

To answer these questions requires a deep Dworkinesque theory about the nature and scope of charitable obligations. But in an odd and perhaps inexcusable omission, Dworkin does not so much as mention the moral grounding or daily practice of charitable work. In his world all these soft obligations are displaced within the community by the inexorable obligation of equal resources.

Note too that this objection as to community boundaries cannot be lodged with equal force against any political theory that does not see redistribution as a fundamental task of government. Practically, of course, the choice of territorial boundaries remains critical: The more coherent the aspirations of individuals governed by a single sovereign, the more likely it is that the community will be able to settle on a set of public goods. Furthermore, so long as state power is not directed toward redistribution, a rich person has less to fear from being included in the same community as a poor one.

The point is not just one of idle theory. The ill-conceived Clinton Health Security Act of 1993 foundered in part because of the impasse over the territorial accounting units for the national plan. The upshot in Illinois, for example, was that a suburbanite would have had to pay far less if grouped with other suburbanites only, but far more if placed in a larger territory with Chicago included. By contrast, a world that does not treat social insurance as a disguised form of wealth distribution effectively parries that difficulty by basing the premium on actuarial risk, rather than social groupings. Each person contributes the same amount to the pool regardless of the geographical pooling.

For the moment, however, assume that community boundaries are as Dworkin sets them on his island: How then to best achieve his ideal of equal resources for all? For Dworkin the answer lies in some vaguely sketched auction in which all islanders are given a standard unit of currency—clamshells—to bid on the material resources sold by the state. Dworkin prefers this auction to the traditional first

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possession rule—dominant in both common law and civil law countries—which assigns the ownership of land to the first occupant, the ownership of chattels to the first person who takes it, and the ownership of wild animals to the first person who captures them. Dworkin's objection to these Lockean rules stems from the unequal and quirky distributions of material wealth they foster.

But Dworkin's egalitarian bias blinds him to the decisive practical advantage of the first possession theory, at least in some states of nature. The auction that Dworkin champions presupposes at a minimum a group of individuals that arrives at the same place at the same time—in other words, his desert island. In contrast, the necessities of nature require that ownership claims be settled between rival tribes who arrive at different times at the same location, speaking quite different languages.

In those cases, a first possession rule provides a convenient focal point that helps limit (nothing will prevent) deadly conflicts between rivals, just as a system of established territories helps limit conflict between territorial animals. An auction is next to useless in these circumstances. Once the latecomer arrives, no auction will be able to make the appropriate offsets for the local improvements generated by members of the first group at their own expense. More generally, the slow diffusion of human beings across unoccupied territories lends itself far better to a first possession rule than a general auction rule, which in turn works better for efficiency reasons in allocating the spectrum for personal communications systems.

The comparison with telecommunications auctions points to another difficulty with Dworkin's system that applies with equal force to Hayek's overambitious theory of spontaneous order. Any system of resource allocation works better within an established social order than it does in establishing the basic rules of the game. In the typical auction, the seller plots to receive the highest value for the goods up for sale. Auctions generally work best for discrete works that are easily reduced to separate ownership, like paintings or collectibles. Dworkin's auction is a far more ambitious affair in which the seller does not seek to maximize wealth but only to allocate all external resources in one fell swoop subject to Dworkin's exacting "envy condition," such that each individual at the conclusion of the bidding is at least as happy with the lot he receives as he would have been with the lot received by anyone else.

But how can this auction take place? A successful auction requires that there be no shortage or surplus of clamshells at the end—a condition that applies to no normal auction. How can we be sure such a condition is satisfied? In addition, the sequence through which the resources are auctioned off could easily influence the ultimate allocation of resources, and thus offend the envy constraint. Perhaps these difficulties could be overcome, but Dworkin does not tell us which of the many variations on auction rules—English auctions, Dutch auctions, second-bidder auctions (whereby the highest bidder receives the item at the price bid by the second highest bidder) should be used, or why.

Dworkin shirks the challenges his system raises. He never explains with the requisite level of detail the legal and political structures needed to implement his own egalitarian program.

Worse still, this political auctioneer has to do far more than his compatriot at Christies or Sothebys. Land, water, and wildlife are hard to inventory; the auctioneer has to be able to decide where Blackacre begins and Whiteacre ends; he has to make provision for unexplored mineral rights; he has to design an allocation system for water rights; and today, he would have to develop a system of property rights for patents, copyrights, trade secrets, and trade names. Yet as Dworkin rightly notes, our political auctioneer does not have at his disposal even the elementary background rules of trespass and nuisance to guide his inquiry. At this point, it seems likely that the auctioneer will have to decide what comes within the bundle of rights out of whole cloth, or resort to the customary practices that have emerged when property is acquired under some variation of the first possession rule that Dworkin rejects in principle.

Once Dworkin's hardy community has run its hypothetical auction, however, the ultimate goal of resource equality still lies far off in the distance. As Locke noted a long time ago, 99 percent of the value of raw land depends on the labor of those who have cleared it. Dworkin's ideal of equality is faced with the following unhappy dilemma: Either he tolerates differences in wealth that are ultimately attributable to natural abilities and temperaments, such that the auction does little to correct the long-term imbalances in wealth and fortune that so trouble the egalitarian, or he tries to include these intangibles in the mix and is faced with the intolerable question of what reduction in material resources is needed to offset a particular combination of natural abilities and talents. Dworkin's ostensible equality of resources thus has to tolerate either massive inequalities in utility, or equally significant intrusions into the lives of ordinary citizens.

Worse still from Dworkin's point of view is that any equality of resources, however defined in the initial position, will prove unstable as individuals experience the vicissitudes of fortune, as they make inevitable choices about consumption, investment, and trade over time, or as new people are born, old people die, and individuals move into and out of the community. As Robert Nozick pointed out in *Anarchy, State and Utopia*, any "patterned theory" of justice has to engage in redistribution not once but repeatedly in order to prevent the actual distribution of wealth from deviating from its chosen ideal.

Dworkin, of course, recognizes this problem but is not able to offer any solution that meets it head-on. The best he can do is propose a form of progressive taxation that continues the process of re-

distribution on an ongoing basis, and which supports systems of universal health care and unemployment insurance. In so doing, he relies on hypothetical insurance markets to supplement hypothetical auctions. He plausibly claims that risk-averse people would be prepared to trade away their economic highs to cushion against their economic lows.

However, he wholly fails to demonstrate even hypothetically that a universal insurance market could cover these risks. That demonstration requires showing that the rates charged could cover the risks of moral hazard and adverse selection, as well as the administrative costs of running the plan. If the costs of the system exceed its gain, then the market shuts down even in theory—just as it often does in reality for earthquake insurance—leaving the foundation of Dworkin's redistributionist scheme in rubble. The state program Dworkin theoretically supports is likely to run at large deficits made up from general tax revenues, and would create weird cross-subsidies from the younger poor to the older rich—a situation that roughly describes Medicare today.

Progressive taxation, of course, could survive for modest purposes even if Dworkin's strong egalitarian agenda breaks down. But he would have done far better then to have forgotten his elaborate social theory and to have consulted instead the extensive economic social-welfarist public finance literature, which seeks to reconcile the desire for a greater equality of wealth with the efficiency concerns of higher levels of output. That literature outlines the key assumptions needed to make the progressive tax work: rapidly diminishing value of wealth coupled with high labor inelasticity (the nonresponsive nature of effort to higher taxes).

If these assumptions are met, then any net utility gains have to be large enough to justify the extensive system of administrative control necessary to prevent the shifting of income across tax periods and across individuals, and the system has to take into account the serious public choice risk that the legislature will set the tax too steep for its own good, prompting in response the political proliferation of dubious tax loopholes. The upshot may be some compression of wealth, but far less than is needed to create the equality of resources that Dworkin defends.

There is, however, a silver lining to all this. Given the difficulties in Dworkin's system, it is certainly respectable to defend a conception of government that speaks of the equal liberties of all individuals to use their natural talents to the fullest, except insofar as it does not involve the use of force and fraud against others. That idea in turn invites a conception of equal (i.e. proportionate) taxes to share the costs of government needed to enforce these basic liberties and to provide the classic forms of infrastructure. Within this spare legal framework, one could then discuss what Dworkin never mentions, which is how various programs—price supports, acreage restrictions, protective tariffs, minimum wage laws, safety laws, antidiscrimination laws, family leave laws, etc., etc.—limit the options of the least well-off, and propose, as Dworkin never considers, the repeal of legislation that simultaneously injures liberty, equality, and prosperity. Finally, one could ask how best to fix the deficits in such stalwart programs as Social Security, Medicare, and welfare programs generally.

But Dworkin doesn't face these challenges. First, he never argues against a coherent, systematic, and complete version of the rival laissez-faire, limited-government theories that he criticizes, and second, he never explains with the requisite level of institutional detail the legal and political structures needed to implement his own egalitarian program.

We all owe a debt to Dworkin for reminding us so forcefully that redistribution of wealth remains an important question on the political agenda, no matter how much libertarians might wish it away. But Dworkin owes a greater debt to the rest of us to explain how his unrelenting concern with equality of fortune can be implemented by the clumsy devices that modern government has at its disposal. As Shimon Peres said long ago: "The friends of liberty have done better by equality than the friends of equality have done by liberty." ◆

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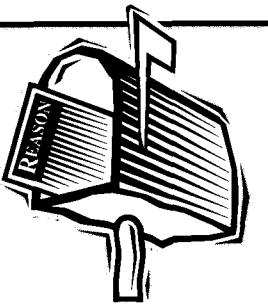

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Land of the Rising Sole

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Those boots on display in a trendy Tokyo store are the notorious *atsuzoko* super-platform shoes. Such "death boots"—they've been implicated in numerous injuries—are worn by Japan's *ganfuro garuzu*, or girl fashion gangs, and by women who want to emulate the gangs' dark-tanned, spiky-haired, mini-skirted look. But those climbing onto up-to-nine-inch soles can be found well beyond Japan's shores: *Atsuzokos* are also popular in Taipei, Bangkok, Hong Kong, and Manila—all over Asia.

Some nations whine endlessly about American cultural power, their citizens spinning out theories of "hegemony," calling for protectionism, and trashing the local McDonald's. But other nations are still vital, and are competing. Japan's export industry, for one, has moved beyond gadgetry. Its hugely popular TV shows, animation, character toys (Hello Kitty), childhood rages (Pokémon), and fashion have helped position Japan as a pop center of gravity.

Nor is Japan alone. This summer, India's films pulled more ticket buyers in London than did their Hollywood competition, spurred by the success of the British-made immigrant comedy, *East is East*. Why? One London critic suggested that Indian filmmakers have gotten ever better at story and character, while Hollywood has bet on mere effects. No doubt. But it is also a sign of a changing Britain, trading its tea time for samosas and Starbucks, and of a world of ever-changing and unpredictable cultural synthesis.

—Charles Paul Freund

Counterrevolution in the Classroom

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Those of us who dwell on campuses and read the *Chronicle of Higher Education* have noticed a recent counterrevolution in the teaching of college humanities. The winds have shifted away from the "deconstructionist" criticism that uncovered hidden themes of race, class, and gender to the more direct "teaching of the text." Aesthetics have become popular again. Instructors have once again taken up the charge of showing students why and how people can perceive beauty in a Shakespearian sonnet or a Rembrandt portrait. Back in style are the profound lessons of truth and meaning.

Why the change? It seems that market forces do work. Students were checking out from obscure, agenda-driven, negative courses dominated by critical theory, finding little reason to sit through the lectures or read the assignments. If the classic texts were seen as neither beautiful nor true, but were taught simply as indications of exploitations long past, why bother with them? The return of *appreciation* for the texts is reawakening student interest.

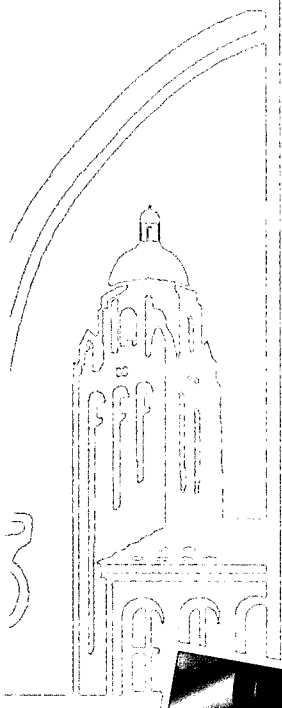
A similar counterrevolution is needed in teaching historical and civic understanding to elementary and secondary school students. **The rage among trendsetters is "cosmopolitan education," a notion that sets itself in opposition to traditional values such as patriotism.** One leading educator, for example, urges schools to avoid instilling "irrational" patriotism "full of color and intensity and passion," claiming that the notion of national belonging "reinforces this kind of irrationality, by lending to what is an accident of history a false air of moral weight and glory." Combined with a teaching of history that emphasizes our country's sins rather than its achievements, the message that students are receiving is negative. My high school daughter (and even her young history teacher, I fear) know far more about how settlers mistreated Native Americans than about how they created the Bill of Rights or outlawed the slave trade.

Critical thinking is essential for any citizen in a democracy, and schools must foster it. But when we *begin* with a critical tone and lean on it repeatedly, students become disaffected. A sense of positive identification is a prerequisite for constructive engagement. Young people need to *care about* something enough to bother criticizing it and improving it.

Young people have turned away from civic engagement to an extent never before witnessed in our society. Voting among 18–24-year-olds, their interest in political campaigns, even their willingness to run for school offices, have all declined sharply over the past twenty-five years. To foster in our young a positive identification with their civil society, we need to give them compelling reasons to become attached.

We must begin by telling students about the best of our traditions and the finest episodes in our history and why so many of their forbearers cherished those traditions enough to devote and even sacrifice their lives to preserve them. We must show the young why patriotism in its noblest sense—open, inclusive, the heart and soul of our free and democratic society—is a virtue and not a vice.

— William Damon



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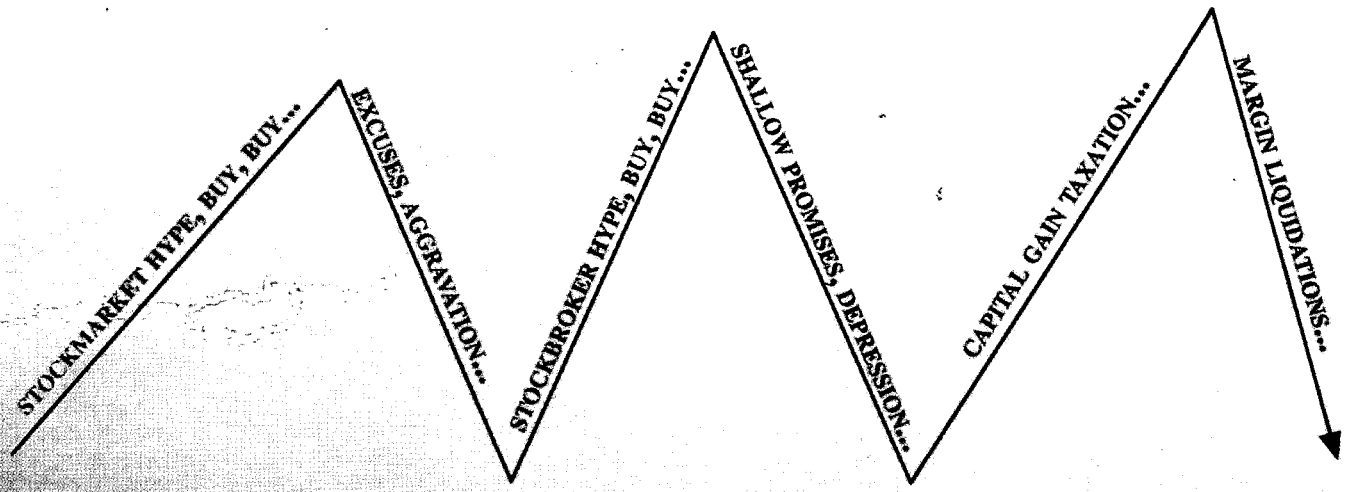

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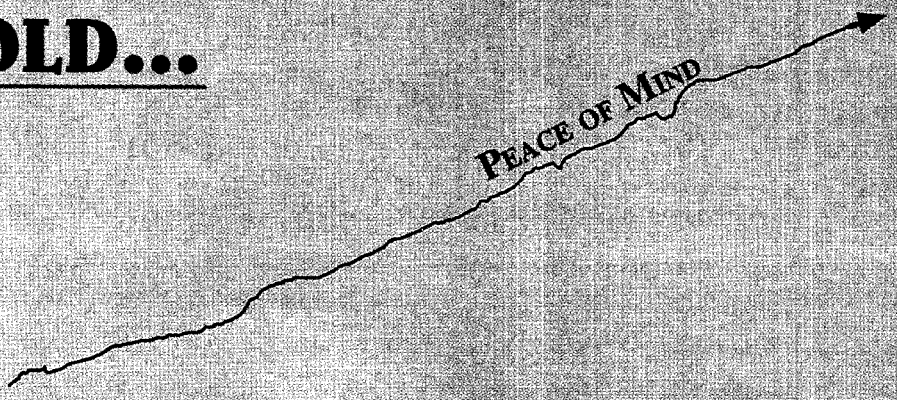

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